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In The

Supreme Court of the United States

October Term, 1995

AKHTAR HAMID, SHRICHAND CHAWLA, SOHA, INC., IDRISS DEVCO, INC., S&L GENTRADE, INC., LEO D. CURRAN, NIAM MUSLEH, WILLY HERMANS, RED CIRCLE INVESTMENTS, LTD., SADIK MAHMOUD HASHIM, NUHA HUSSAIN MUBAREK, JALEH KHORASSANCHY, PHILIP MERZ and AMIT PANDYA, On Behalf Of Themselves and All Others Similarly Situated,

Petitioners,

vs.

PRICE WATERHOUSE; PRICE WATERHOUSE/U.K.; PRICE WATERHOUSE WORLD FIRM, LTD.; PRICE WATERHOUSE/U.S.; ERNST & YOUNG; ABU DHABI, EMIRATE OF ABU DHABI; ABU DHABI INVESTMENT AUTHORITY; BANK OF AMERICA CORPORATION; BANKAMERICA CORP.; BANK OF AMERICA NT&SA; HILL & KNOWLTON; GRP INVESTMENTS; INTERREDEC, INC.; INTERREDEC SOUTHERN CO.; FIRST AMERICAN CORP.; FIRST AMERICAN BANKSHARES; PAUL ADAMS; JACK BEDDOW; A. VINCENT SCOFFONE; T. BERTRAM LANCE; INDEPENDENCE BANK; MANUEL NORIEGA; FULVIO DOBRICH; ROBERT ALTMAN, CLARK CLIFFORD and CLIFFORD & WARNKE,

Respondents.

Petition For Writ Of Certiorari
To The Ninth Circuit Court Of Appeals

PETITION FOR WRIT OF CERTIORARI
APPENDIX VOLUME I (PAGES A-1 TO A-62)

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QUESTIONS PRESENTED

1. Whether Petitioners, including U.S. citizens and residents, who were induced by fraud to deposit their money in a criminal enterprise, the notorious Bank of Credit & Commerce International ("BCCI" or the "Bank"), which was shut down by regulators in July 1991, lack standing to sue those who induced them to deposit their funds in the Bank through false and misleading representations concerning BCCI's legitimacy, solvency and success because their claims are "derivative" and, therefore, belong to the Bank – the criminal enterprise that defrauded them.

2. Whether Petitioners' allegation that they have suffered injury to their business or property by the loss of at least 75% of their money by reason of defendants' pattern of racketeering activity is sufficient to give them standing to bring civil claims pursuant to § 1964(c) of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1964(c), under this Court's decision in *National Organization for Women, Inc. v. Scheidler*, ___ U.S. ___, 114 S. Ct. 798 (1994).

PARTIES TO THE PROCEEDING

Petitioners, who were plaintiffs-appellants in the court below, are Akhtar Hamid, Shrichand Chawla, Soha, Inc., Idriss Devco, Inc., S&L Gentrade, Inc., Leo D. Curran, Niam Musleh, Willy Hermans, Red Circle Investments, Ltd., Sadik Mahmoud Hashim, Nuha Hussain Mubarek, Jaleh Khorassanchy, Philip Merz and Amit Pandya. Pursuant to Rule 29.1, Petitioners hereby certify that there are no parent companies or subsidiaries of these corporations.

Respondents, who were defendants-appellees in the court below, are Price Waterhouse, Price Waterhouse/U.K., Price Waterhouse World Firm, Ltd., Price Waterhouse/U.S., Ernst & Young, Abu Dhabi, Emirate of Abu Dhabi, Abu Dhabi Investment Authority, Bank of America Corporation, BankAmerica Corporation, Bank of America NT&SA, Hill & Knowlton, GRP Investments, Interredec, Inc., Interredec Southern Company, First American Corporation, First American Bankshares, Paul Adams, Jack Beddow, A. Vincent Scoffone, T. Bertram Lance, Independence Bank, Manuel Noriega, Fulvio Dobrich, Robert Altman, Clark Clifford and Clifford & Warnke.

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PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit that affirmed the district court's dismissal of this action. Petitioners' claims, which are brought under § 1964(c) of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1964(c), were dismissed on the ground that they lack standing to recover their money because their claims are "derivative" and belong to the principal wrongdoer in the scheme to defraud them.

Petitioners, who deposited nearly $4 million in the Bank of Credit & Commerce International ("BCCI" or the "Bank"),[1] include U.S. citizens and residents who are victims of the largest transnational financial institution fraud committed by the most notorious international criminal enterprise in history. Their Complaint alleges that the BCCI criminal enterprise, which falsely posed as a law-abiding, legitimate, solvent and prudent bank, fraudulently obtained their money (deposits), thereby enabling the Bank's insiders and controlling shareholders to misappropriate those funds and/or use them to finance criminal activities worldwide. Petitioners allege

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[1] "BCCI" or the "Bank" include Bank of Credit & Commerce International, S.A.; BCCI Holdings (Luxembourg), S.A.; Bank of Credit & Commerce International Holdings (Luxembourg), S.A.; Bank of Credit & Commerce International (Overseas) Limited; International Credit & Investment Company (Overseas) Limited; International Credit & Investment Company Holdings; and Credit & Commerce American Investment, B.V. BCCI was a group of banks and corporations located in various countries under common ownership and control and founded by defendants Agha Hasan Abedi ("Abedi"), Swaleh Naqvi ("Naqvi"), BankAmerica Corp. and Sheikh Zayed al-Nahayan in 1972. When it was shut down in July 1991, BCCI was an international banking operation with 400 branches located in over 70 countries and was the fifth largest private bank in the world. A-65 to A-69, A-132 to A-135.

that they were the targets and direct victims of the fraudulent scheme and were damaged because they lost at least 75% of their deposits. Petitioners sued the wrongdoers – BCCI's officers, directors and controlling shareholders, as well as the Bank's lawyers and accountants and other persons and entities who participated in the criminal enterprise – under § 1964(c) of RICO seeking to recover their losses.

BCCI and many of its operatives have been indicted and/or convicted of crimes (including RICO violations) in the U.S. yet Petitioners, the depositors whose monies were obtained through the criminal enterprise's fraudulent scheme, had their claims dismissed on a Rule 12(b)(6) motion to dismiss, supposedly because they lacked standing to assert a civil RICO claim that was *based on the same conduct that had resulted in those criminal RICO convictions and indictments*. The court below reasoned that Petitioners' claims belonged to the Bank that had defrauded them, so that only BCCI could pursue an action against the other wrongdoers and it held that Petitioners, who lost their money in the largest criminal fraud in history, suffered no injury to their business or property sufficient to give them standing to sue under § 1964(c) of RICO. A-15 to A-21.

This Petition should be granted because (1) this case presents important questions of law about the ability of U.S. citizens and residents to combat transnational schemes to defraud utilizing the civil remedies which Congress expressly provided in RICO; (2) the decision of the court below conflicts with *National Organization for Women, Inc. v. Scheidler*, ___ U.S. ___, 114 S. Ct. 798 (1994) ("*NOW*"), which established what allegations of injury to business or property confer RICO standing in a private action; and (3) it conflicts with reported decisions from the Second, Third, Fourth, Fifth and Seventh Circuits holding that intended victims and targets of schemes to defraud like the depositors here have standing to bring RICO claims against the perpetrators.

OPINIONS BELOW

The Ninth Circuit's opinion, *Hamid v. Price Waterhouse*, 51 F.3d 1411 (9th Cir.), *rehearing denied*, No. 92-56085 (9th Cir. Aug. 16, 1995), is reproduced in the Appendix. *See* A-1 to A-22. The district court's opinion, *In re Bank of Credit & Commerce Int'l Depositors Litig.*, MDL Docket No. 908, 15 RICO L. Rptr. 1234 (C.D. Cal. May 20, 1992), is also reproduced therein. *See* A-24 to A-62.[2]

BASIS FOR JURISDICTION

The Ninth Circuit's opinion was issued on April 7, 1995. A-1. The petition for rehearing *en banc* filed by Petitioners was denied on August 16, 1995. A-23. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISION

Section 1964(c) of RICO provides:

> Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

18 U.S.C. § 1964(c).

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[2] Also reproduced in the Appendix are pertinent excerpts from Petitioners' 482-page Third Amended Complaint for Violations of the Racketeer Influenced and Corrupt Organizations Act, International Financial and Banking Corruption and Outlawing ("Complaint"), which was filed in the district court on January 30, 1992. *See* A-63 to A-338.

STATEMENT OF THE CASE

A. The Allegations Of The Complaint

This is a RICO action brought by Petitioners, who include U.S. citizens and residents,[3] who are victims of the constellation of banks known as BCCI, the largest criminal enterprise in history. Petitioners sued on their own behalf seeking to recover lost deposits totaling $4 million and also sought to represent a class of nearly one million defrauded depositors who were induced to place their money in the Bank, where it was used to finance illegal transactions, siphoned off to BCCI insiders and

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[3] As detailed in the Complaint, Akhtar Hamid is a U.S. citizen and California resident who deposited $140,000 in a BCCI Bank in London; Shrichand Chawla is an Indian citizen and California resident who deposited $600,000 in a BCCI Bank in Hong Kong; Soha, Inc. is an Oregon corporation resident in California which deposited $125,000 in BCCI's Los Angeles agency; Idriss Devco, Inc., a California corporation resident in that state, and S&L Gentrade, Inc., an offshore corporation incorporated in the U.K., deposited $2 million in BCCI's Los Angeles agency; Philip Merz is a U.S. citizen and Pennsylvania resident who deposited $52,000 in a BCCI Bank in Luxembourg; Amit Pandya is a U.S. citizen and Washington, D.C., resident who deposited 30,000 British pounds in a BCCI Bank in London; Leo D. Curran is a U.S. citizen and Pennsylvania resident who deposited $41,000 in a BCCI Bank in Luxembourg; Niam Musleh is an Abu Dhabi citizen who deposited $10,000 in a BCCI Bank in Abu Dhabi; Willy Hermans is a citizen of the Netherlands and a resident of the Cayman Islands who deposited $74,000 in a BCCI Bank in Grand Cayman; Red Circle Investments, Ltd. is a Grand Cayman corporation which deposited over $687,000 in a BCCI Bank in Grand Cayman; Sadik Mahmoud Hashim and Nuha Hussain Mubarek, husband and wife, are Iraqi citizens and permanent Canadian residents who deposited $65,000 in a BCCI Bank in London; and Jaleh Khorassanchy is a French and Iranian citizen and California resident who deposited 12,000 British pounds, 37,000 Deutsche marks and $3,000 dollars in a BCCI Bank in Paris. *See* A-115 to A-132.

affiliates and lost forever when the Bank was seized by U.S. (and foreign) bank regulators. Because of defendants' fraudulent scheme, depositors have been denied *any* access to their funds since July 1991. BCCI petitioned U.S. bankruptcy courts for protection and it was found by a U.K. court to be "plainly and hopelessly insolvent" and ordered liquidated in Luxembourg. A-115. Because BCCI was deliberately headquartered by its founders in "secrecy" jurisdictions where deposit insurance is virtually non-existent, the Complaint alleges that Petitioners will *never* recover more than 25% of their deposits. A-65 to A-67, A-113 to A-132.[4]

Petitioners' Complaint alleges that BCCI misrepresented its financial condition and operations in financial statements which overstated its assets, capital and profitability, thereby obtaining billions in deposits from customers, including U.S. citizens and residents. Petitioners were induced to deposit their funds by false and misleading representations concerning BCCI's legitimacy, solvency and success. Once deposited in the Bank, their funds were improperly used by BCCI and defendants to make illegal transfers to the Bank's insiders and their business associates and finance the concealment, continuance and extension of the BCCI criminal enterprise (thus continuing the flow of deposits into the Bank) through bribery and deceit of public officials and regulators to facilitate or cover-up illegal infiltration of the U.S. banking system. As detailed in the Complaint (whose allegations were supported by over 2,000 pages of exhibits and

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[4] BCCI and many of its officers and their co-conspirators were indicted on federal and state charges, including RICO, and many pled guilty. BCCI pled guilty in 1990 and 1991 to state and federal criminal charges (including RICO) arising from its illegal conduct in the U.S. As part of its RICO guilty plea, BCCI forfeited over $550 million in assets located here. A-111 to A-113; *see also United States v. BCCI Holdings (Luxembourg), S.A.*, 46 F.3d 1185, 1188 (D.C. Cir.), *cert. denied*, ___ U.S. ___, 115 S. Ct. 2613 (1995).

appendices filed in the district court),[5] defendants' RICO predicate acts included bribery, mail, wire, bank and securities fraud, dealing in narcotic drugs, obstruction of justice, and monetary transactions in property from illegal activity, all designed to create the false image that BCCI was sound, profitable and legitimate. A-65 to A-111, A-189 to A-214, A-247 to A-277.

The BCCI criminal enterprise had a direct and substantial impact in the U.S., where the Bank (1) solicited and obtained millions in deposits from U.S. citizens and residents (and others) through offices located in several cities (including, *inter alia*, Los Angeles, San Francisco and Beverly Hills, California; Miami, Boca Raton and Tampa, Florida; Houston, Texas; Chicago, Illinois; New York City; and Washington, D.C.), and (2) illegally infiltrated the U.S. banking system by secretly obtaining control of First American Bankshares, Inc. ("First American"), a bank holding company which operated banks with over 400 branches in six states; the National Bank of Georgia ("NBG"), the state's largest bank; CenTrust Savings Bank ("CenTrust") in Florida, which controlled some 20 branches; Independence Bank (which had 11 branches); and Viking Savings in California. A-65 to A-69.

BCCI was founded in 1972 by establishing separate entities in "secrecy" jurisdictions (the Cayman Islands

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[5] These documents included several defendants' federal and state criminal indictments and guilty pleas, as well as government investigative reports, enforcement proceedings and forfeiture orders detailing the fraudulent scheme, including the two-volume U.S. Senate investigative report issued on Sept. 30, 1992 entitled *The BCCI Affair: A Report to the Senate Committee on Foreign Relations* prepared by the Subcommittee on Terrorism, Narcotics and International Operations (the "Kerry Report"), and the Sept. 1992 report of the General Accounting Office entitled *Foreign Bank – Initial Assessment of Certain BCCI Activities in the U.S.* (the "GAO Report").

and Luxembourg) with notoriously lax banking regulations and supervision. This allowed BCCI to avoid having a single outside auditor examine all of the Bank's subsidiaries or review many key records, thus avoiding comprehensive governmental regulation or any effective overall audit of BCCI. A-71 to A-73.[6] The Bank and defendants also filed false statements (including financial statements) with U.S. regulators and other banking authorities. With the help of its accountants, BCCI consistently reported false profits and capital and, even after losses were first disclosed in the late 1980's, continued to report a strong financial condition. A-74 to A-75, A-214 to A-241. In 1985, BCCI represented that it was

> adequately supported by a capital fund in excess of $1 billion. . . . [Its] results show a total shift of emphasis from growth to consolidation, from quantity to quality – an emphasis on high capital/asset ratio, high liquidity, high quality of assets. . . . *The focus will continue to accentuate on conservatism and prudence during the next decade.*

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[6] As the GAO report stated:

> Although national banking supervisors could supervise most BCCI operations within their geographic areas, none had the responsibility or authority to examine BCCI's worldwide activities. *The corporate structure established by BCCI thus had the effect of minimizing close supervision of the full range of its operations and apparently enabled it to avoid detection of its activities and true condition for almost 2 decades.* For example, BCCI could remove transactions from the accounts of one subsidiary at selected times and place them on the accounts of BCCI units in the countries, thereby shielding these activities from supervisory review and external audit.

GAO Report at 3. (Here, as elsewhere, emphasis has been added unless indicated otherwise.)

A-83; *see also* A-214 to A-218. In 1988, BCCI represented that its *"success so far is due to the honesty and integrity of purpose of the entire staff,"* that the Bank's policy *"is always to follow scrupulously all the laws of each country where we do business"* and that BCCI tried to avoid doing business with *"firms or individuals of questionable background."* A-83.

In its annual reports, BCCI "thank[ed] the Central Banks and Supervisory Agencies in countries where the Group Banks are operating for the valuable guidance extended to them," and represented that BCCI's *"balance sheet reflects our management policies to maintain prudent ratios and a high level of liquidity. Special attention is also being paid to the quality and diversification, geographically and industry-wise, of the group's loan portfolio."* A-220, A-221. In 1988, BCCI described its business in glowing terms, stating that "our principal activities will be in the area of commercial banking" and that "our business policies will be based on . . . [h]igh liquidity to be maintained through broad based and diversified customer deposits," high quality assets and "[q]uality profit generated both from sustainable and regular streams and through short term transactions and deals." A-227 to A-228. Petitioners reasonably believed (and relied upon) these statements and, as noted above, deposited $4 million in the Bank. A-115 to A-132; *see also* A-189 to A-214.

Even after BCCI's first U.S. criminal indictment in 1988 and its reported losses, the Bank still provided strong reassurances to its depositors:

> [W]e are able to report the major support given by the Government of Abu Dhabi. . . . [T]hey subscribed $400 million in new capital – largely eliminating the negative impact on the Capital Funds position of the Group . . . , thus providing an increasingly solid and sound foundation. . . . [e]nhanced efforts to maintain high liquidity result[ing] in an increase in liquid assets from $9.8 billion to $12.4 billion during the year. . . . [and the] investment portfolio totalling $1.812

> million . . . , [which] continues to consist primarily of US Treasury stock. . . . With the support of our new shareholders we are confident that a bright future awaits the Group.

A-233, A-234, A-236. In April 1990, when the Bank was on the verge of collapse, it made the situation appear positive, stating that Abu Dhabi's injection of new capital *"gives the necessary strength to the [BCCI] Group to support its future performance and development,"* that BCCI was operating *"very normally,"* that the Bank of England was *"fully in the picture"* and there was no real ground for concern by depositors. A-87, A-88, A-229 to A-232. One year later, the Bank was in ashes.

In June 1991, after being ordered by the Bank of England to report BCCI's true financial condition, defendant Price Waterhouse admitted that there were over $600 million in unrecorded deposits in the Bank and that:

> [T]he accounting records and financial position of the [BCCI] Group have been falsified in relation to the above transactions for a substantial number of years [and] these transactions represent only a part of a wholesale deception to misrepresent and falsify the financial position of [BCCI] over the last decade through a series of complicated manipulations [including] a significant falsification of the accounting records (involving false loans, transactions, and confirmations) on such a scale that the true financial history of BCCI is unlikely to be able to be recreated. . . .

A-89. Price Waterhouse admitted that *"it would appear that the bank has generated significant losses over the last decade and may never have been profitable in its entire history." Id.* Within days, regulators seized BCCI, having discovered its illegal infiltration of the U.S. banking system, falsification of its financial condition, financing illegal drug and arms transactions, laundering drug money and undisclosed insider "lending" transactions. A-69 to A-73, A-89.

In July 1991, BCCI and certain of its officers and directors were indicted in New York on charges that they operated BCCI as a criminal enterprise, while the Federal Reserve Board announced it would bar defendants Ghaith Pharaon, Abedi, Kemal Shoaib and Naqvi from engaging in U.S. banking activities and stated it would fine BCCI $200 million for lying to regulators to conceal the illegal infiltration of the U.S. banking system. In September 1991, the Department of Justice identified BCCI as a "criminal enterprise" and charged the Bank's treasurers during 1980-1991 (defendants Syed Ziauddin Uddin Ali Akbar and Dildar Rizvi) with allowing BCCI's U.S. offices to launder money from the illegal narcotics smuggled into this country. In November 1991, BCCI and several of its officers were indicted for illegal acquisition and control of First American, CenTrust and Independence Bank. A-69 to A-71. Other indictments, guilty pleas, forfeiture orders, enforcement proceedings, government investigations and attendant revelations followed as the stain of this worldwide financial scandal spread to unprecedented proportions.

New York County District Attorney Robert M. Morgenthau condemned BCCI as *"the largest bank fraud in world financial history."*[7] It has been publicly reported that:

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[7] A-109. In announcing New York State's indictment of BCCI and its top officers for stealing depositors' money in the U.S., prosecutor Morgenthau stated:

> *This indictment spells out the largest bank fraud in world financial history,*. . . . BCCI was operated as a corrupt criminal organization throughout its entire 19 year history. It systematically falsified its records. . . . And it paid bribes and kickbacks to public officials.
>
> * * *
>
> *By means of this scheme, the defendants obtained more than $20 billion from its depositors, including citizens and foreign nationals in New York City [and] banks headquartered in Manhattan. . . . The best estimates*

> Nothing in the history of modern financial scandals rivals the unfolding saga of [BCCI], the $20 billion rogue empire. . . . Never has a single scandal involved so much money, so many nations or so many prominent people. . . . [I]t is the largest corporate criminal enterprise ever, the biggest Ponzi scheme, the most pervasive money-laundering operation and financial supermarket ever created for the likes of Manuel Noriega, Ferdinand Marcos, Saddam Hussein and the Colombian drug barons.

A-111.[8] This case involves international organized crime on an unprecedented scale and, in January 1992, BCCI

> *indicate at this time that upwards of $5 billion has been lost through this fraud.*
>
> * * *
>
> The corporate structure of BCCI was set up to evade international and national banking laws so that its corrupt practices would be unsupervised and remain undiscovered. . . . The defendants systematically falsified the capital structure of BCCI to make it appear as though it was a solvent, profitable bank secured by the backing of wealthy businessmen from the Middle East.
>
> In fact, *much of the bank's capitalization and assets were fictitious. . . . The defendants . . . defrauded their thousands of depositors, both small and large, who relied on that appearance of respectability.*
>
> *This largest of Ponzi schemes is over.*

A-109 to A-111.

[8] The Kerry Report stated that "BCCI was not a bank which made an adequate return on investment through lending out depositors funds like other banks"; rather, "BCCI was instead an international criminal enterprise and Ponzi scheme, which used new depositors' funds to pay current expenses and to repay earlier depositors, creating a pyramid of mounting obligations that ultimately and inevitably would bring about BCCI's collapse." Kerry Report at 66.

pled guilty to a superseding federal indictment which identified it as a RICO criminal enterprise, admitting a wide range of illegal conduct, including fraudulently and secretly acquiring direct or indirect ownership and control over First American and Independence Bank.

B. The Scheme To Defraud BCCI's Depositors

Petitioners' Complaint alleges that defendants participated in a complex scheme to mislead bank regulators and defraud depositors. A-189 to A-214.[9] The district

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[9] As the district court described (albeit in truncated form) defendants' multi-faceted scheme to defraud BCCI's depositors:

> The facts alleged in [Petitioners'] Complaint fall into three categories: (1) BCCI's involvement in various criminal activities; (2) regulatory violations stemming from BCCI's secret ownership and control of several [U.S.] financial institutions; and (3) *the worldwide fraud perpetrated upon depositors, which ultimately ended in the financial collapse of BCCI. . . . [Petitioners] allege that the defendants' violations of RICO caused them to lose their deposits as follows*:
>
> (a) *[Petitioners] were defrauded into placing their deposits into a criminal enterprise instead of a legitimate bank because BCCI falsely represented that it had substantial assets, profitability, a lawful operation and would be able to honor depositors' claims;*
>
> (b) the ongoing existence of BCCI's criminal enterprise would not have been possible had the defendants not helped BCCI to continue to operate;
>
> (c) *as a continuing operation, BCCI continued to accept [Petitioners'] deposits;* and
>
> (d) because of defendants' racketeering acts (which continued the operation of BCCI), banking regulators seized BCCI on July 5, 1991, freezing [Petitioners'] funds and causing their present losses.

A-30 to A-31 (footnotes and citations omitted); *see also* A-277 to A-338 (describing causal relationship between defendants' violations of § 1962(c)-(d) of RICO, 18 U.S.C. § 1962(c)-(d), and Petitioners' injury).

court sustained Petitioners' allegations of wrongdoing against *each* defendant, stating that "many of plaintiffs' allegations clearly and painstakingly detail defendants' involvement with BCCI." A-33.[10] The Complaint details Petitioners' standing to sue for injuries sustained by reason of defendants' wrongdoing, alleging that their multi-million dollar injuries are separate from *any* injury suffered *by BCCI*, are not incidental thereto and that Petitioners sustained *direct* injury. A-65 to A-67, A-113 to A-115. Petitioners allege that BCCI and the defendants engaged in criminal conduct which benefitted each of them while harming the fraudulent scheme's *targeted* or *intended* victims, who were defrauded into depositing their monies in (and leaving their funds on deposit with) the Bank as a result of, *inter alia*, BCCI's false financial statements and filings with government regulators, which enabled the enterprise to continue to operate and misrepresent itself as a well-capitalized, safe, conservatively managed institution when, in fact, it was a criminal enterprise operating a Ponzi scheme. After regulators seized BCCI and Petitioners lost access to their deposits, the Bank was found to be "plainly and hopelessly insolvent" and ordered liquidated; as a result, Petitioners have lost at least 75% of their deposits. A-113 to A-115.

C. Proceedings In The Courts Below

Notwithstanding such detailed allegations, the Ninth Circuit affirmed the district court's dismissal of Petitioners' RICO claims based on the conclusion that they

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[10] *See also* A-65 to A-113 (summary of Complaint); A-136 to A-189 (identification of defendants and description of each one's participation in the BCCI criminal enterprise); A-189 to A-214 (description of scheme to steal Petitioners' deposits and each defendant's participation in the BCCI criminal enterprise); A-214 to A-241 (identification and description of BCCI's false financial statements and reports); and A-241 to A-277 (description of defendants' RICO predicate acts).

lacked *standing* to sue the defendants. A-15 to A-21.[11] Ignoring (or misreading) the pertinent allegations of the Complaint, the court below mischaracterized Petitioners' injuries as "indirect," A-17, as if BCCI (the criminal enterprise) was the innocent victim of defendants' fraudulent scheme. It was not. Even so, the Ninth Circuit acknowledged that defendants' wrongful acts *caused* Petitioners' injuries:

> As depositors, [Petitioners] are creditors of BCCI. They allegedly loaned money to BCCI which, because of the various wrongs by defendants, it was unable to pay back. *To the extent that the alleged wrongs reduced the ability of the bank to pay its debts, or caused it to be in business for a longer time than it should have been so that it could continue to borrow money from depositors fooled about its true condition, the wrongs would have had the practical consequence of harming [Petitioners].*

A-16 to A-17 (citations omitted).

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[11] In its opinion, the court below repeatedly stressed that BCCI was not named as a defendant in the Complaint, as if this point had any significance given BCCI's undisputed insolvency. *See, e.g.*, A-4 ("Appellants claim to represent depositors of funds in what they call 'the constellation of banks known as [BCCI].' They do not sue the 'constellation of banks.' They sue seventy-seven people, firms, and a foreign country."). The court below overlooked the Complaint's specific allegations that "[i]n July, 1991, the BCCI Banks filed for bankruptcy in the United States District Court for the Southern District of New York" and "[w]ere it not for the injunction entered by that court against the filing or prosecution of suits against BCCI," it "would be named as a defendant." A-133. The fact that Petitioners chose not to name one of the wrongdoers as a defendant, precisely because it was insolvent, is legally irrelevant to the validity of Petitioners' RICO claims. *Cf. U.S. Industries, Inc. v. Touche Ross & Co.*, 854 F.2d 1223, 1251 (10th Cir. 1988).

Incorrectly relying on *Popkin v. Jacoby (In re Sunrise Sec. Litig.)*, 916 F.2d 874, 880-83 (3d Cir. 1990) (*"Sunrise"*), the court below inexplicably stated that Petitioners "should be treated the same as shareholders in a corporation," A-18, concluding that "the[ir] RICO claim is derivative and there is no standing on the part of the shareholders or depositors to assert it." *Id.* In other words, according to the Ninth Circuit, Petitioners' claims belong to BCCI, the very Bank that defrauded them. This analysis is outrageous and compels reversal.

Ignoring subsequent Third Circuit decisions limiting *Sunrise* to its unusual facts, as well as Second, Third, Fourth, Fifth and Seventh Circuit cases recognizing the RICO standing of defrauded creditors under these circumstances, the court below justified dismissal of Petitioners' claims by stating that "allowing the derivative suit would lead to double counting of damages and would interfere with an equitable liquidation" of BCCI's assets in Luxembourg, A-19 to A-20, adding insult to the multi-million dollar injuries already sustained by Petitioners by unjustifiably terming this lawsuit an "attempt to jump in line ahead of other creditors," A-21.

REASONS FOR GRANTING THE WRIT

This case arises out of "the largest case of organized crime in history."[12] This Petition presents critical issues

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[12] Kerry Report at 64. The Kerry Report concluded, *inter alia*, that (1) BCCI constituted *"international financial crime on a massive and global scale"*; (2) "systematically bribed world leaders and political figures throughout the world"; (3) developed "a strategy to infiltrate the U.S. banking system, which it successfully implemented, despite regulatory barriers that we designed to keep it out"; and (4) that the Bank's accountants *"failed to protect BCCI's innocent depositors and creditors from the consequences of poor practices at the Bank of which the auditors were aware for years."* Kerry Report at 10, 11 and 14. Accordingly, in its legislative and policy recommendations, the Kerry Report

concerning the standing of U.S. citizens and residents to maintain civil enforcement actions under RICO, which was designed to combat fraud and organized crime in every form. The Ninth Circuit's decision ignores *NOW*, 114 S. Ct. at 803, which established how the requisite injury to business or property must be pled to state a claim under § 1964(c) of RICO, as well as reported decisions from the Second, Third, Fourth, Fifth and Seventh Circuits holding that the intended victims of fraudulent schemes (here, bank depositors) have standing to bring RICO claims against the perpetrators.

Review by this Court is necessary not only to correct an injustice to Petitioners, who include U.S. citizens and residents, but also to avoid a precedent that will create a gaping loophole in the ability of *all* U.S. citizens to protect themselves from or remedy injuries caused by offshore financial fraud. If uncorrected, the decision of the court below means that financial criminals can operate from offshore secrecy jurisdictions with impunity.[13] The Ninth Circuit's decision means that such modern-day financial pirates can illegally enter and operate in the U.S., defraud U.S. citizens by inducing them to deposit their funds in offshore financial institutions (or their U.S.-

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concluded, *inter alia*, that the U.S. should "develop a more aggressive and coordinated approach to combat international financial crime," emphasizing that BCCI and its insiders "*used foreign bank secrecy and confidentiality laws to commit crimes*, to prevent the detection of those crimes, and to obstruct law enforcement efforts to investigate and prosecute crimes once they were discovered." *Id.* at 25, 776.

[13] According to the Kerry Report, BCCI and defendants carried out their fraudulent scheme by using bank secrecy havens (including Luxembourg and the Cayman Islands) to avoid regulation on a consolidated basis by any single regulator of the Bank, thereby permitting BCCI to transfer assets and liabilities from bank to bank as needed to conceal the Bank's true economic status. Kerry Report at 69-70; *see also* A-67 to A-68.

based agency offices), but then avoid the victims' civil RICO action by claiming that it was the financial institution which was the real victim of their crime and, therefore, the depositors (creditors) have no standing to sue. Thus, the defrauded depositors' *only* remedy will be to accept whatever pittance they receive from some insolvency proceeding conducted in a foreign land, in which they have no convenient way to participate, which will not produce a full recovery of their lost funds and which provides them no civil RICO remedy against the officers and directors of the financial institution, let alone the other participants in the operation of the criminal enterprise.[14]

The Ninth Circuit phrased the issue as, "Can a depositor sue a bank robber?," and answered it no, A-17, but Petitioners did *not* sue someone like a "bank robber," or another wholly unrelated third party who had no prior relationship with either the depositors or the Bank. Rather, Petitioners sued BCCI's officers, directors, accountants and lawyers who made false representations to them that caused Petitioners to deposit money in the

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[14] Even if a financial institution used by criminals as a vehicle to steal money from the public is (in a sense) a "victim" of that criminal conduct and has its own rights which its trustee in bankruptcy (or receiver) can assert against the perpetrators, that does *not* mean that the depositors whose money had to be fraudulently obtained for the criminal enterprise to operate in the first place are not the *primary targets* of the fraud or its *direct victims*. This Court long ago established that a trustee (or receiver) of an insolvent entity does *not* have the ability to assert the claims of the victims of the fraudulent scheme (*i.e.*, the depositors or stockholders who were cheated by the enterprise) when the insiders used it as an instrumentality to cheat the public to obtain their funds as investors (or depositors). *See Caplin v. Marine Midland Grace Trust Co.*, 406 U.S. 416, 431-32 (1972).

Bank, or misrepresentations to U.S. regulators that permitted the Bank to continue to operate and, thus, continue to solicit and accept deposits from U.S. citizens and residents.

It cannot be gainsaid that the wrongful conduct detailed in Petitioners' Complaint was sufficient to create *criminal* RICO liability for BCCI (the undisputed RICO enterprise) and its top operatives, but was insufficient to provide Petitioners, the targets and victims of the fraudulent scheme, with sufficient standing to prosecute their *civil* damage claims past the pleading stage. The people whose money was stolen by the criminal enterprise and its insiders were thrown out of court on a standing technicality, even though their Complaint described the fraudulent scheme, identified the criminal enterprise and alleged that Petitioners were the targets and intended victims of the criminal enterprise who have lost at least 75% of their money – even allowing for whatever recovery they may obtain someday through BCCI's overseas reorganization proceedings.

The Ninth Circuit's decision is illogical and irrational. It does violence to RICO's statutory language and intent and it conflicts with this Court's decision in *NOW* and numerous circuit court decisions permitting creditors to use RICO to remedy a fraud that was perpetrated on them through a pattern of racketeering. It leaves U.S. citizens and residents who deposited their monies in a bank that was illegally and fraudulently operating in this country without *any* remedy. If permitted to stand, the Ninth Circuit's decision will also leave U.S. citizens and residents without *any* RICO remedy when they are cheated in the future by an international financial fraud perpetrated by criminals operating offshore in secrecy jurisdictions where deposit insurance is non-existent and regulatory oversight is lax at best. That is wrong. The decision below sets a dangerous precedent and it should be reversed.

ARGUMENT

A. RICO's Statutory Provisions And Liberal Construction Clause Compel Its Application To Combat International Financial Fraud, Including The BCCI Enterprise, And Allow Petitioners To Bring Civil RICO Claims Against The Persons And Entities That Defrauded Them

It is undisputed that BCCI, its insiders and the professionals who participated in the operation of the criminal enterprise engaged in unprecedented global financial and regulatory fraud, as confirmed by the Bank's 1992 guilty plea to *criminal* RICO charges. RICO's express purpose is "the imposition of . . . *new civil sanctions* to provide *new legal remedies* for *all types of organized criminal behavior*, that is, enterprise criminality – from simple political corruption to sophisticated white-collar crime schemes to traditional Mafia-type endeavors."[15] RICO's extraterritorial reach is undisputed,[16] and, given the

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[15] *United States v. Cauble*, 706 F.2d 1322, 1330 (5th Cir. 1983), *cert. denied*, 465 U.S. 1005 (1984) (footnote and citation omitted). This Court has confirmed that "RICO was an aggressive initiative to supplement old remedies and develop new methods for fighting crime." *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 498 (1985) (citing *Russello v. United States*, 464 U.S. 16, 26-29 (1983)); *see also United States v. Turkette*, 452 U.S. 576, 591 (1981).

[16] *See, e.g., Alfadda v. Fenn*, 935 F.2d 475, 479 (2d Cir.) (in an action alleging fraud in securities transactions that occurred partly overseas, subject matter jurisdiction over civil RICO claims upheld because some predicate acts constituting the pattern of racketeering activity occurred within the U.S.), *cert. denied*, 502 U.S. 1005 (1991); *C.A. Westel de Venezuela v. American Tel. & Tel. Co.*, Case No. 90 Civ. 6665 (PKL), 1993 U.S. Dist. LEXIS 16857 (S.D.N.Y. Nov. 30, 1993) (following *Alfadda* in civil RICO action brought by foreign plaintiffs who were injured abroad because at least some predicate acts were committed in the U.S.); *United States v. Noriega*, 746 F. Supp. 1506, 1517 (S.D. Fla.

Complaint's detailed allegations, no sharp pencil analysis is required to apply it to defendants' fraudulent scheme. No person or entity is immune from RICO's penalties, no matter what their alleged pedigree or purported community stature.[17] The broad language deliberately employed by Congress when drafting RICO, and § 1962 in particular, *see H.J., Inc.*, 492 U.S. at 232-33, and the statute's Liberal Construction Clause, compel its straightforward application here to provide a remedy to Petitioners.[18]

B. Petitioners Properly Pleaded Their Standing To Sue Under Section 1964(c) Of RICO In Accordance With This Court's Decision In *NOW*, Which The Court Below Ignored

Section 1964(c) provides that "any person injured in his business or property by reason of" a violation of § 1962 may bring a civil action and may recover treble

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1990) (same); Zvi Joseph, *The Application of RICO to International Terrorism*, 58 Fordham L. Rev. 1071 (1990); Michael Goldsmith & Vicki Rinne, *Civil RICO, Foreign Defendants, and "ET"*, 73 Minn. L. Rev. 1023 (1989).

[17] *See H.J., Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 248-49 (1989) ("Congress drafted RICO broadly enough to encompass a wide range of criminal activity, taking many different forms and likely to attract a broad array of perpetrators operating in many different ways."); *Sedima*, 473 U.S. at 499 (observing that "Congress wanted to reach both 'legitimate' and 'illegitimate' enterprises" and that "[t]he former enjoy neither an inherent incapacity for criminal activity nor immunity from its consequences") (citing *Turkette*, 452 U.S. at 586-87).

[18] Congress expressly stated that RICO "shall be liberally construed to effectuate its remedial purposes." 84 Stat. 941 (1970). RICO is the "only substantive federal criminal statute that contains such a directive." *Russello*, 464 U.S. at 27. Thus, "RICO is to be read broadly" and the statute's remedial purposes are "nowhere more evident" than in the provision of a private action for those injured by racketeering activity. *Sedima*, 473 U.S. at 497-98.

damages. 18 U.S.C. § 1964(c). Thus, "[i]f the defendant engages in a pattern of racketeering activity in a manner forbidden by these provisions, and the racketeering activities injure the plaintiff in his business or property, the plaintiff has a claim under § 1964(c)." *Sedima*, 473 U.S. at 495. Petitioners were defrauded into depositing their monies in (and leaving their funds on deposit with) the Bank as a result of BCCI's false financial statements and filings with government regulators, which enabled the Bank to continue to operate and misrepresent itself as a well-capitalized, safe, conservatively managed institution when, in fact, it was a criminal enterprise operating a Ponzi scheme. A-65 to A-113, A-189 to A-214. After regulators seized BCCI and Petitioners lost access to their deposits, the Bank was found to be "plainly and hopelessly insolvent" and ordered liquidated; the Complaint alleges that Petitioners have lost at least 75% of their deposits, A-115, A-116 to A-132.

Petitioners' injury and standing to sue were more than sufficiently alleged under *NOW*, 114 S. Ct. at 803, a civil RICO action brought by health care clinics – Delaware Women's Health Organization ("DWHO") and Summit Women's Health Organization, Inc. ("SWHO") – against anti-abortion groups:

> We have held that "[a]t the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim." *Lujan v. Defenders of Wildlife*, 504 U.S. ___, ___ (1992) (citations omitted). The District Court dismissed petitioners' claim at the pleading stage pursuant to [Fed. R. Civ. P.] 12(b)(6), so their complaint must be sustained if relief could be granted "under any set of facts that could be proved consistent with the allegations." *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). DWHO and SWHO alleged in their complaint that the

> respondents conspired to use force to induce clinic staff and patients to stop working and obtain medical services elsewhere. Petitioners claimed that this conspiracy "has injured the business and/or property interests of the [petitioners]." In addition, petitioners claimed that respondent Scheidler threatened DWHO's clinic administrator with reprisals if she refused to quit her job at the clinic. Paragraphs 106 and 110 of petitioners' complaint incorporate these allegations into the § 1962(c) [RICO] claim. *Nothing more is needed to confer standing on DWHO and SWHO at the pleading stage.*

114 S. Ct. at 803 (parallel citations and record references omitted). The decision of the court below, which affirmed dismissal of Petitioners' RICO claims for purported failure to allege standing, held exactly the opposite of *NOW*. The Ninth Circuit ignored this Court's precedent and *refused* to credit the Complaint's allegations that Petitioners were *injured* in their business or property by reason of BCCI's fraud, finding instead that the Bank was the *victim* of the fraud. A-15 to A-21. Its holding squarely conflicts with *NOW* and presents a compelling reason why this Petition should be granted.

C. Petitioners' RICO Claims Are Not "Derivative" Of Any Claims Purportedly Belonging To BCCI And The Decision Of The Court Below Conflicts With Decisions From The Second, Third, Fourth, Fifth And Seventh Decisions Recognizing Petitioners' Standing To Sue

While holding that Petitioners' RICO claims are "derivative" (*i.e.*, belonging to BCCI itself so that Petitioners lack standing to prosecute them), A-18, the court below ignored the Complaint's express allegations that BCCI was not a *victim* of the fraud – it *committed* the

fraud.[19] To say that BCCI owns the claims of those whom it defrauded is contrary to law and fact and in derogation of the Complaint's express allegations. Petitioners' claims are *not* derivative of BCCI and the Complaint alleges that this action "is not brought on behalf of or for the benefit of BCCI seeking to recover any damages on its behalf, assert any causes of action belonging to it or to remedy any loss suffered by it." Rather, it "is brought on behalf of [Petitioners] directly for the damages they suffered due to the operation of BCCI as a criminal enterprise" and "asserts causes of action belonging to them and which can be asserted only by them." A-66; *see also* A-113 to A-114.

The Ninth Circuit's conclusions that Petitioners' RICO claims are "derivative" of BCCI (and/or those "claims" purportedly belonging to its liquidators) *and* that they have no standing to assert them contradict the legal principle that a liquidator or trustee does *not* have standing to pursue damage claims on behalf of victims of wrongful conduct carried out by an insolvent entity, its officers and directors and the professionals who participate with them in schemes to defraud. In *Caplin*, 406 U.S. at 431-32, this Court held that the trustee of an insolvent entity does *not* have standing to sue on behalf of victims of its fraud and cannot preempt the victims' lawsuit because they have standing to pursue their *own* claims.[20]

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[19] In *NOW*, this Court stated that "the 'enterprise' in subsection (c) [of § 1962] connotes generally the *vehicle* through which the unlawful pattern of racketeering activity is committed, rather than the *victim* of that activity." 114 S. Ct. at 804. *See also Reves v. Ernst & Young*, ___ U.S. ___, 113 S. Ct. 1163, 1171, 1173 (1993); *Jaguar Cars v. Royal Oaks Motor Car Co.*, 46 F.3d 258, 265-68 (3d Cir. 1995). The Complaint alleges that BCCI was a *perpetrator* of RICO predicate acts, *not* a victim of *others'* criminal acts. A-65 to A-67, A-113 to A-115. The court below ignored (or misread) Petitioners' allegations.

[20] *Caplin* holds that a bankruptcy trustee has *no standing* to raise claims on behalf of the estate's creditors (*i.e.*, victims of

That principle has been consistently followed in the federal courts until the Ninth Circuit's decision in this case.[21] Therefore, BCCI's liquidators – which may not even have the power of a U.S. bankruptcy trustee (indeed, the court below made no findings on this important issue) – lack standing to assert Petitioners' claims because they are *not* derivative.[22]

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alleged breaches of duty), and emphasizes that victims should be permitted to bring their *own* action, make their own decisions and have control of litigation brought on their behalf. 406 U.S. at 431. *Caplin* directly supports Petitioners' standing to sue here because this Court emphasized that *"a suit by the trustee in reorganization does not pre-empt suits by individual debenture holders," id.* at 431-32 (footnotes omitted), because the trustee does *not* have the right or authority to assert the "individual" or "personal" claims of shareholders, creditors (including depositors) or third parties.

[21] *See, e.g., In re Educators Group Health Trust*, 25 F.3d 1281, 1284 (5th Cir. 1994); *Steinberg v. Buczynski*, 40 F.3d 890, 893 (7th Cir. 1994) ("the trustee . . . has no right to enforce entitlements of a creditor"); *In re Rare Coin Galleries, Inc.*, 862 F.2d 896, 900 (1st Cir. 1988) ("The trustee . . . has no power to assert any claim on behalf of the creditors when the cause of action belongs solely to them."); *Williams v. California 1st Bank*, 859 F.2d 664, 667 (9th Cir. 1988) (creditors could not assign to trustee causes of action alleging that bank had participated in, had knowledge of, or approved debtor's Ponzi scheme); *Rochelle v. Marine Midland Grace Trust Co.*, 535 F.2d 523, 527 (9th Cir. 1976) ("quickly dispos[ing]" of claims that bankruptcy trustee asserted on behalf of the bankrupt's creditors and debenture purchasers, stating that trustee "has no standing to maintain the action on the part of any person or entity other than his debtor corporation").

[22] In the courts below, defendants never admitted that BCCI's liquidators *have* standing to pursue claims against them; instead, they asserted only that Petitioners *lack* standing. The Ninth Circuit affirmed dismissal of Petitioners' RICO claims without *any* factual findings regarding BCCI liquidators' power and/or ability to sue wrongdoers. A-20 to A-21.

The decision of the court below ignores well-settled law holding that when creditors of an insolvent entity have been victimized by fraud committed by the corporation and the officers, directors and professionals who participated therein, *those creditors have standing to directly pursue RICO claims against the non-bankrupt wrongdoers.* Thus, *GICC Capital Corp. v. Technology Finance Group*, 30 F.3d 289 (2d Cir. 1994), held that a creditor (noteholder) had standing to bring a RICO claim against persons and entities which allegedly looted the assets of the corporate maker of a $500,000 promissory note given in exchange for settlement of prior unrelated litigation. Relying on numerous Second Circuit decisions, Judge Lumbard stated that "[w]hen a corporation fraudulently is caused to issue debt and stripped of its assets in a manner that obviously will leave the creditors unpaid, *those creditors have standing,*" even though the looting did not specifically target the creditor (noteholder) as opposed to other creditors. *Id.* at 293 (citations omitted). *In re EDC, Inc.*, 930 F.2d 1275 (7th Cir. 1991), held that creditors had standing under RICO to complain about a fraudulent scheme under which the seller of a steel company allegedly conspired with the debtors' parent corporation in order to create (and artificially maintain) the debtors through cash infusions from the seller for the purpose of defrauding the Pension Benefit Guaranty Corporation from reimposing liability on the seller for vested pension benefits that the debtors assumed as part of the transaction. Judge Posner "agree[d] that the creditors have standing to complain about the alleged fraud even though they were not its primary victims – the Pension Benefit Guaranty Corporation was," *id.* at 1279, explaining that "[o]ne can be an intended victim without being the primary victim." *Id.*[23] Other circuit courts have

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[23] Thus, creditors who were "secondary" victims of the fraud had standing because defendants "had to fool [plaintiff] in order to [maintain the fraudulent scheme]. Fooling [plaintiff]

concurred,[24] but the court below ignored these precedents.[25]

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was an intended step in the overall scheme and the fact that it was an intermediate step . . . does not defeat their rights." *EDC*, 930 F.2d at 1279-80. In this case, Petitioners alleged that they were both primary *and* intended victims of defendants' fraudulent scheme. A-65 to A-67, A-113 to A-114. Even *if* the fraud was directed against BCCI (which it was not), Petitioners were at least "intended" victims of the fraudulent scheme and their standing to sue under § 1964(c) of RICO is clear.

[24] *See, e.g., Ashland Oil v. Arnett*, 875 F.2d 1271, 1279-80 (7th Cir. 1989) (oil suppliers who sustained injury when distributor fraudulently obtained large quantity of oil from them and diverted it to other concerns prior to filing for bankruptcy relief had RICO standing); *Ocean Energy II v. Alexander & Alexander*, 868 F.2d 740, 747 (5th Cir. 1989) (policyholder of insolvent insurance company has standing to bring RICO action against agent that wrongfully induced purchase of policy and policyholder's damages arising out of insurer's insolvency are not property of insurer's estate; "Pressure Services was the target and victim of the alleged scheme to induce it to purchase insurance from Transit. . . . *Only* Pressure Services has standing to sue for these damages allegedly caused by fraud directed against it."); *Sutliff, Inc. v. Donovan Cos.*, 727 F.2d 648, 654 (7th Cir. 1984) (allowing RICO claims brought by creditors when defendants stripped debtor of its assets after fraudulently inducing extension of credit creating impression that debtor was solvent; "[T]here is no question that as allegedly intended victims of the scheme the plaintiffs were injured in their business or property by reason of the alleged violations" of RICO) (citation omitted). *See also* 2 Arthur F. Mathews, *et al., Civil RICO Litigation*, § 8.04[C][3], at 8-74 to 8-75, § 8.04[C][3][b][ii], at 8-86 to 8-89 (1992).

[25] In *Holmes v. Securities Investment Protection Corp.*, 503 U.S. 258, 112 S. Ct. 1311 (1992), where the RICO action filed by SIPC was founded on its subrogation to the rights of the broker-dealer account holders who suffered injury because the brokerage firm was forced into insolvency by defendants' misconduct, this Court held that the link was too remote between the stock manipulation alleged and the customers' harm, being purely contingent on the harm suffered by the broker-dealers. In other

Contrary to the Ninth Circuit's conclusion, *see* A-17 to A-19, this case is *not* like *Sunrise*, where a thrift institution that failed due to mismanagement, *not criminal misconduct*, was subject to the U.S. banking system's comprehensive regulatory scheme, which provided Federal Savings and Loan Insurance Corporation ("FSLIC") deposit insurance covering virtually all depositors' losses and authorized a governmental receiver, the Federal Deposit Insurance Corporation ("FDIC"), to sue to recover not only what was paid by FSLIC to cover deposits, but also to make good depositors' *uninsured* losses. Under this distinguishable set of facts, the Third Circuit affirmed entry of summary judgment, *not* a motion to dismiss.[26] That court has limited *Sunrise* to its

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words, the conspirators allegedly injured these customers only insofar as the stock manipulation first injured the broker-dealers and left them without the wherewithal to pay customers' claims. This Court acknowledged, however, that those customers who owned manipulated securities would *themselves* be the victims of defendants' fraud with standing to sue:

> We do not rule out that, if, by engaging in the [stock] parking transactions, the conspirators committed mail fraud, wire fraud, or "fraud in the sale of securities," the broker-dealers' customers might be proximately injured by these offenses.

112 S. Ct. at 1320 n.19 (quoting 18 U.S.C. § 1961(1)(D)) (citations omitted). The same principle applies here and demonstrates why Petitioners have standing to assert RICO claims against defendants.

[26] In *Sunrise*, the FDIC, acting as statutory receiver, took over the thrift, paid off depositors up to the $100,000 FSLIC insurance limit and, pursuant to its statutory authority, sued wrongdoers for mismanagement of and *fraud on the thrift* seeking to obtain monies to distribute in a statutory priority of distribution scheme, including payments for uninsured deposits. *Eighteen months after the FDIC filed suit*, five depositors (who had already been repaid $100,000 each, received partial payments on their "uninsured" interest and were owed just $1,879 each) brought a RICO action. The FDIC settled its suit

unique facts, as shown by *University of Maryland v. Peat Marwick Main & Co.*, 923 F.2d 265 (3d Cir. 1991), which upheld RICO claims brought by policyholders of an insolvent insurer who contended that accountants had wrongly certified the insurer's financial statements, even though state insolvency proceedings existed where a receiver could pursue claims on behalf of failed entities. The court distinguished *Sunrise* because "the policyholders do not allege that [Peat Marwick's] actions caused Mutual Fire's insolvency, *but rather that [Peat Marwick] wrongfully certified Mutual Fire's financial statements, upon which the policyholders relied to their detriment*," emphasizing that "the policyholders have standing to sue [Peat Marwick]."[27]

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with court approval over plaintiffs' objections, recovering additional funds to be applied to depositors' claims. Then, and only then, *and with the FDIC's support*, did the district court *grant summary judgment*, holding that plaintiffs lacked standing. In affirming, the Third Circuit stressed "important policy considerations" because "continuation of plaintiffs' suit could disrupt the efforts of FDIC to recover the institution's assets, which were depleted by defendants' mismanagement" for equitable distribution "in accordance with the federal priority scheme." *Sunrise*, 916 F.2d at 888. The FDIC objected to depositors' RICO suit as an "inequitable and inefficient" disruption of its rehabilitation efforts, an action which "threatens to further complicate the immense task of liquidating the institution's assets." *Id.* at 889. None of these facts were present in this case, but the court below ignored these distinguishing factors in embracing *Sunrise*. *See* A-17 to A-19.

[27] *University of Maryland*, 923 F.2d at 274 (citation omitted). In *Hayes v. Gross*, 982 F.2d 104 (3d Cir. 1992), the Third Circuit again refused to follow *Sunrise*, holding that stock purchasers in a savings association who alleged that its officers and directors had misrepresented its financial condition, thereby causing the purchasers to pay an inflated price for its stock, could assert their claims directly against the corporate insiders. The court expressly rejected the notion advanced by the Ninth Circuit in this case that permitting the shareholder's action to proceed

Petitioners allege that BCCI's false financial statements were used to solicit deposits and deceive regulators into permitting the Bank to continue to operate (and thereby obtain more deposits) *and* create a false impression which continually misled Petitioners into believing that BCCI was well-capitalized and operating lawfully. A-65 to A-67, A-115 to A-132, A-189 to A-214. Under the decisions from the Second, Third, Fourth, Fifth and Seventh Circuits cited above, Petitioners have standing to sue but the court below incorrectly held that their claims are "derivative" and belong to the Bank that defrauded them. A-17 to A-20. The unjustness of this holding is evident because BCCI was established in "secrecy" jurisdictions where there is little, if any, deposit insurance. Unlike *Sunrise*, this case does *not* involve a comprehensive statutory scheme in which one liquidator is empowered to pursue claims for the benefit of all depositors. Petitioners' Complaint asserts legal claims that are subject to the *least* defenses and will produce a recovery for the victims undiluted by *in pari delicto* defenses, comparative fault reductions, criminal penalties, liquidation expenses, or other creditors' claims.

Petitioners may sue under § 1964(c) of RICO because they have been injured in their business or property by reason of defendants' racketeering activity and these claims, if not pursued by BCCI's victims, will *never* be pursued on their behalf by liquidators who lack standing

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would result in a "double" recovery, asserting that "we see no conflict between plaintiff's interest and those of the creditors and other stockholders." *Id.* at 108. *Accord Riley v. Simmons*, 45 F.3d 764, 774-75 (3d Cir. 1995). In *Howard v. Haddad*, 916 F.2d 167 (4th Cir. 1990), where a shareholder brought claims against the officers of a failed bank alleging that defendants induced him to purchase the bank's stock without disclosing its precarious financial condition, the Fourth Circuit held that the shareholder's claims were *not* derivative because his claims were based upon misrepresentations, not mismanagement of the bank, thereby establishing his standing to sue. *Id.* at 170.

to do so. Yet, Petitioners' meritorious claims against BCCI's officers and directors and the professionals who participated in the criminal enterprise will *never* be litigated and Petitioners' deposits, which were frozen *more than four years ago*, will be lost forever.

CONCLUSION

For the reasons stated herein, the Petition for Writ of Certiorari should be granted.

DATED: October 31, 1995

Respectfully submitted,

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Attorneys for Petitioners

Akhtar HAMID, on Behalf of Himself
and all Others Similarly Situated,
Plaintiffs-Appellants,

v.

PRICE WATERHOUSE, Price Waterhouse/U.K.; Price Waterhouse World Firm Ltd.; Price Waterhouse/U.S.; Ernst & Young; Abu Dhabi, Emirate of Abu Dhabi; Abu Dhabi Investment Authority; Bank of America Corporation, Bankamerica Corp.; Bank of America NT & SA; Hill & Knowlton; Concorde Finance & Investments, GRP Investments; Interredec, Inc.; Interredec Southern Co.; et al.; First American Corp., First American Bankshares; Paul Adams; Jack Beddow; A. Vincent Scoffone; T. Bertram Lance; Independence Bank; Manuel Noriega; Fulvio Dobrich; Robert Altman; Clark Clifford; Clifford & Warnke, Defendants-Appellees.

Akhtar HAMID, on Behalf of Himself
and all Others Similarly Situated,
Plaintiffs-Appellees,

v.

PRICE WATERHOUSE, Price Waterhouse/U.K.; Price Waterhouse World Firm Ltd.; Price Waterhouse/U.S.; Ernst & Young; Abu Dhabi, Emirate of Abu Dhabi; Abu Dhabi Investment Authority; Bank of America Corporation, Bankamerica Corp.; Bank of America NT & SA; Hill & Knowlton; Concorde Finance & Investments, GRP Investments; Interredec, Inc.; Interredec Southern Co.; et al.; T. Bertram Lance; Independence Bank; Manuel Noriega; Fulvio Dobrich; Robert Altman; Clark Clifford; Clifford & Warnke, Defendants,

and

First American Corp., First American Bankshares, Inc.; Paul G. Adams; Jack Beddow; A. Vincent Scoffone; Defendants-Appellants.

Akhtar HAMID, on Behalf of Himself and all Others Similarly Situated, Plaintiffs-Appellees.

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PRICE WATERHOUSE, Price Waterhouse/U.K.; Price Waterhouse World Firm Ltd.; Price Waterhouse/U.S.; Ernst & Young; Abu Dhabi, Emirate of Abu Dhabi; Abu Dhabi Investment Authority; Bank of America Corporation, Bankamerica Corp.; Bank of America NT & SA; Hill & Knowlton; T. Bertram Lance; Independence Bank; Manuel Noriega; Robert Altman; Clark Clifford; Clifford & Warnke, First American Bankshares, Inc.; Jack W. Beddow; Paul G. Adams; A. Vincent Scoffone, Defendants,

and

Concorde Finance & Investments; Interredec, Inc.; Interredec Southern Company, Inc.; Wesley Company, Inc.; River Oaks, Inc.; River Oaks Investments, Inc.; Sterling Bluff, Inc.; GRP Investments N.V., Defendants-Appellants.

Nos. 93-56085, 92-561998 and 92-56199.

United States Court of Appeals
Ninth Circuit.

Argued and Submitted Jan. 31, 1994.

Decided April 7, 1995.

Before BROWNING, BOOCHEVER and KLEINFELD, Circuit Judges.

KLEINFELD, Circuit Judge:

This is an appeal from dismissal of a class action by depositors in the Bank of Credit & Commerce International ("BCCI"). The issues we resolve involve timeliness of appeal, judicial recusal, the derivative nature of the depositors' RICO claims, and the application of the Alien Tort Statute.

We have jurisdiction over depositors' claims pursuant to 28 U.S.C. § 1291. We review the district court's dismissal for failure to state a claim *de novo*. *Oscar v. University Students Co-Operative Ass'n*, 965 F.2d 783, 785 (9th Cir.1992) (en banc). A district court's refusal to disqualify the sitting judge may be reversed only for an abuse of discretion. *Thomassen v. United States*, 835 F.2d 727, 732 (9th Cir.1987).

I. FACTS

This case was dismissed for failure to state a claim upon which relief can be granted, under Federal Rule of Civil Procedure 12(b)(6). We therefore are bound to evaluate whether the complaint states causes of action on the assumption that appellants could prove the averments. *Pillsbury, Madison & Sutro v. Lerner*, 31 F.3d 924, 928 (9th Cir.1994).

Appellants claim to represent depositors of funds in what they call "the constellation of banks known as Bank of Credit & Commerce International ("BCCI")." They do not sue the "constellation of banks." They sue seventy-seven people, firms, and a foreign country.

The complaint alleges that the seventy-seven defendants illegally acquired various banks in the United States, caused deposits to be misused and misappropriated, and, by misrepresenting facts about BCCI, delayed the day when regulators would shut it down. By making the bank appear to be in better financial condition than it really was, some defendants are alleged to have enabled it to attract deposits which it otherwise would have been unable to obtain. Most of the Complaint consists of elaborating the egregiousness of the misuse and misappropriation of funds, including allegations of financing international terrorism, narcotics, and arms dealing, and using bribery and fraud to keep governments from interfering with BCCI's and the defendants' activities, along with extensive polemical elaborations such as pointing out that the "BCCI pirates" were "men in business suits." The looting which allegedly caused the bank to be unable to pay the depositors included loans to insiders which were intended never to be repaid.

The district court dismissed depositors' RICO claims without leave to amend after they filed their third amended complaint. Appellants' arguments go to whether their claims were such that relief could be granted, not whether they could have stated valid claims had they been given another chance to amend.

Facts dealing with particular issues are explicated more fully below, in the discussions of the issues.

II. ANALYSIS

A. Appellate Jurisdiction

We must first decide whether the appeal was untimely, depriving us of jurisdiction. The complaint went through four iterations. The district court dismissed the third amended complaint on April 30, 1992. On May 11, the plaintiffs moved to recuse Judge Marshall, on the ground that the employment plans of her law clerks required her to be disqualified. They also filed a motion under Federal Rule of Civil Procedure 52(b) to vacate the April 30 judgment on the basis of Judge Marshall's alleged disqualification. They did not appeal at that time.

Judge Marshall issued a corrected version of her order and judgment May 20. Judge Byrne denied the motion to recuse Judge Marshall July 9. Judge Marshall then denied the Rule 52(b) motion July 27. Plaintiffs filed their notice of appeal August 19. The appeal is directed to the merits of the dismissal, not just to whether Judge Marshall should have been recused. The appellate jurisdiction issue is whether the appeal was timely as to the merits. On its face, an August 19 appeal from a May 20 judgment comes more than thirty days after the judgment. *See* Fed. R. Civ. P. 4(a)(1).

Appellees argue that the motion to vacate the judgment could not properly be characterized as a Rule 52(b) motion, that it should not be characterized as a Rule 59 motion which would toll the running of the thirty days, and that as a Rule 60(b) motion, it would not toll the

thirty days. They are correct about Rule 52(b). That rule governs motions to amend findings of fact. This case was dismissed before trial; the district court did not hear evidence or make findings. Nor was the motion directed toward correction of any findings. It related solely to recusal because of the law clerks' conflicts of interest.

Appellees are also correct that at the time the notice of appeal was filed, a Rule 60(b) motion was not among those which would toll the thirty days for filing notice of appeal. Fed.R.App.P. 4(a)(4).[1] We are nevertheless satisfied that appellants' motion, denominated incorrectly as a Rule 52(b) motion, should properly be deemed a Rule 59(e) motion. If a timely Rule 59 motion is filed, the thirty days for appeal does not begin to run until entry of the order on that motion. Fed.R.App.P. 4(a)(4).

The motion to vacate on the ground that the judge should have recused herself appears on its face to be no more of a Rule 59 than a Rule 52(b) motion, for the same reasons. Nevertheless, our precedents require that we treat a motion to vacate an order of dismissal as a Rule 59(e) motion. *Mir v. Fosburg*, 646 F.2d 342, 344 (9th Cir.1980). Our precedents also require that we treat a motion which could have been made as a timely Rule 59 motion as though it were so made. *Sierra On-Line, Inc. v.*

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[1] The notice of appeal was filed August 19, 1992. The amendment at Fed.R.App.P. 4(a)(4)(F), which provides that the time for appeal runs from the entry of the order disposing of a motion for relief under Rule 60, was not yet in effect. Because we conclude that appeal was timely under the rules in effect in 1992, we do not have occasion to decide whether the 1993 amendment would affect pending appeals filed prior to the date of the amendment.

Phoenix Software, Inc., 739 F.2d 1415, 1419 (9th Cir.1984). This liberality has the practical effect of letting appeal wait until the timely post-trial motion has been decided. The 1993 amendments to Federal Rule of Appellate Procedure 4(a)(4) will no doubt obviate this confusion.[2]

The appeal was timely as to the merits, not just as to recusal, so we have jurisdiction.

B. Recusal

The appellants claimed below, and argue here, that Judge Marshall should have recused herself from the case because of her law clerks' employment plans. The motion to recuse Judge Marshall and vacate the judgment on this ground was denied by a different district judge, Judge Byrne. We review the district court's denial of the recusal

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[2] Fed.R.App.P. 4(a)(4), as amended effective December 1, 1993, provides as follows:

> (4) If a party makes a timely motion of a type specified immediately below, the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding. This provision applies to a timely motion under the Federal Rule of Civil Procedure:
> (B) to amend or make additional findings of fact under Rule 52(b), whether or not granting the motion would alter the judgment;
> (C) to alter or amend the judgment under Rule 59;
> (F) for relief under Rule 60 if the motion is served within 10 days after entry of judgment. . . .

The amendment changed the wording, changed the numbering of the subsections, and added the reference to Rule 60. Under the rule previously in effect, reference was made to motions under Rules 50(b), 52(b), and 59, but not 60.

motion for abuse of discretion, *Thomassen v. United States*, 835 F.2d 727, 732 (9th Cir.1987), and find none.

A federal judge must disqualify herself from any proceeding in which her impartiality might reasonably be questioned. 28 U.S.C. § 455(a). The test for recusal in this circuit is " 'whether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned.' " *Milgard Tempering, Inc. v. Selas Corp. of Am.*, 902 F.2d 703, 714 (9th Cir.1990) (quoting *Herrington v. Sonoma Cty.*, 834 F.2d 1488, 1503 (9th Cir.1987)). Depending on how an individual judge manages her chambers, a law clerk's role in her decisionmaking may be quite significant. Even if the judge has no reason to recuse herself based upon her own circumstances, a law clerk's relationships might cause the impartiality of decisions from that judge's chambers in which the clerk participates reasonably to be questioned.

However, "[i]f a clerk has a possible conflict of interest it is the clerk, not the judge, who must be disqualified. . . . [A] law clerk's acceptance of future employment with a law firm would [not] cause a reasonable person to doubt the judge's impartiality so long as the clerk refrains from participating in cases involving the firm in question." *Hunt v. American Bank & Trust Co.*, 783 F.2d 1011, 1016 (11th Cir.1986), *quoted in Milgard*, 902 F.2d at 714.

Two of Judge Marshall's law clerks' employment relationships are at issue, and they are different. Clerk One served as Judge Marshall's law clerk during the earliest stages of the case at bar, and he subsequently became an associate at Debevoise & Plimpton ("the Debevoise firm"). The Debevoise firm represents one of

the named defendants, Price Waterhouse/United States. Clerk One filed a sworn declaration stating that he did no work at all on the case at bar while he clerked for Judge Marshall. He says he read the complaint (a public document) on his last day clerking and put it in Judge Marshall's file, but did not ever discuss the case with the judge or have any other involvement with the case during his clerkship. At the time he left his clerkship, Clerk One did not know that the Debevoise firm would subsequently appear for a defendant.

Clerk One had no involvement in the case at bar which would give rise to a disqualification of Judge Marshall. A reasonable person knowing all the facts regarding Clerk One's relationship with the Debevoise firm and his lack of involvement in the case at bar would not conclude that the impartiality of Judge Marshall's decision in the case should be questioned. The rule laid down in *Hunt* and *Milgard* would prevent recusal on account of Clerk One's relationship with the Debevoise firm because Clerk One did not work on the case at bar. His advice to and research for Judge Marshall could not be tainted if he gave no advice and did no research.

Judge Marshall's other law clerk, Clerk Two, did extensive work on the case. The question regarding Clerk Two is either he had a disqualifying relationship with a law firm such that Judge Marshall should have taken him off the case. Mr. Lerach, plaintiffs' counsel, filed a declaration asserting that he had learned that (1) Clerk Two was on a "leave of absence" from Skadden, Arps, Slate, Meagher & Flom ("the Skadden firm") during his clerkship with Judge Marshall, (2) the Skadden firm represented Clark Clifford and Robert Altman, defendants in

the case at bar, in a criminal case arising out of their involvement with BCCI, and had accepted service of process for them in the case at bar; and (3) Clerk Two "was scheduled" to return to the Skadden firm when he finished his clerkship, but "at the last moment" instead went to work at a different law firm "in the same building as Skadden, Arps and on a contiguous floor."

No reasonable person would suspect that a law clerk was slanting his advice to a judge in favor of a law firm because the clerk subsequently went to work for a different law firm "in the same building . . . on a contiguous floor." It is to filter out fantastic suggestions like this that the word "reasonable" is part of the recusal test.

However, a reasonable person might be concerned whether a law clerk's advice to a judge would be biased in favor of the position taken by a firm, if the law clerk had worked there before his clerkship, was on a leave of absence, and planned to work there after his clerkship. *Cf. Hunt*, 783 F.2d at 1015. Clerk Two, however, filed a declaration stating that this was not what had happened. He asserted that he had "terminated" his employment at the Skadden firm prior to his clerkship, and although the firm had made him an offer, he had not resumed employment with the firm and had accepted an offer from a different firm. He also said that during the time he worked on the case at bar for Judge Marshall, he "was unaware" that the Skadden firm represented any clients in matters relating to BCCI, the firm did not appear for anyone in the case, and he had not communicated with anyone in the firm about the case. The Skadden firm in fact has not appeared for any party in the case at bar.

Judge Byrne accepted the truth of Clerk Two's representation that he did not know the Skadden firm had a role of any kind relating in any way to the BCCI case. We conclude that Judge Byrne did not abuse his discretion in deciding that Clerk Two's prior association with the Skadden firm required neither his removal from the case nor Judge Marshall's recusal because of his failure to remove himself.

Because of the very large number of defendants and law firms involved in this case, the likelihood that a law clerk would have some sort of connection to one of them is higher than in most cases, and the likelihood that that connection would matter is lower. A reasonable observer would more likely see any relationship "as implicit in the special circumstances [of the complexity of the case and large number of parties and law firms involved] rather than as an odd coincidence the failure to avoid which might suggest bias." *In re Allied-Signal, Inc.*, 891 F.2d 967, 971-72 (1st Cir.1989). The question of bias is one of whether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned. It is not a question of whether a line can be drawn connecting a person within chambers to a person or firm related, no matter how remotely, to a party in the case.

We need not determine whether a different conclusion could be reached on the facts. It is enough that Judge Byrne did not abuse his discretion in deciding that Judge Marshall need not have recused herself on account of her law clerks' professionsal relationships with the two law firms.

C. Law of Nations

The complaint alleges that the seventy-seven defendants committed "torts in violation of the laws of nations and treaties of the United States." It does not specify which treaties, and the appellate briefs apparently do not dispute the correctness of the district court's dismissal of any claims based on violations of treaties. The complaint alleges the defendants violated the law of nations by causing the bank to loan money to criminals and to insiders and bribing or lying to bank regulators.

Because many of the members of the purported class are aliens, appellants argue the district court had jurisdiction to decide this claim under the Alien Tort Statute, 28 U.S.C. § 1350. The Alien Tort statute provides: "The district court shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." *Id.* The district court dismissed this cause of action without leave to amend because the depositors did not allege official action or a violation of the law of nations.

The Alien Tort Statute has seldom been invoked, so precedent is sparse for the definition of "law of nations." Analyzing the scope of the Alien Tort Statute, the Second Circuit noted that "although it has been with us since the first Judiciary Act . . . no one seems to know whence it came." *IIT v. Vencap, Ltd.*, 519 F.2d 1001, 1015 (2d Cir.1975). We have previously stated "[t]he debates that led to the Act's passage contain no reference to the Alien Tort Statute, and there is no direct evidence of what the First Congress intended it to accomplish." *Trajano v.*

Marcos (In re Estate of Ferdinand E. Marcos Human Rights Litig.), 978 F.2d 493, 498 (9th Cir.1992).

We do not need to reach the issue of whether the law of nations applies to private, as opposed to governmental conduct. *See Sanchez-Espinoza v. Reagan*, 770 F.2d 202, 206-07 (D.C.Cir.1985) (law of nations does not reach private, nonstate conduct); *IIT*, 519 F.2d at 1015 (violation of law of nations arises only when relationship between states or between individual and state is affected). *Compare Filartiga v. Pena-Irala*, 630 F.2d 876, 880 (2nd Cir.1980) (act of torture committed by state official violated law of nations) *with Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774, 791, 819 (D.C.Cir.1984) (per curiam) (Edwards, J., concurring and Bork, J., concurring) (affirming dismissal of action by Israeli citizens against PLO terrorists and distinguishing *Filartiga* as involving official action). Deciding whether private conduct is subject to the law of nations would not resolve the case, because the complaint alleges that the Emirate of Abu Dhabi and Abu Dhabi Finance Department were among the wrongdoers.

The wrongs alleged are in substance fraud, breach of fiduciary duty and misappropriation of funds. Although the conduct was international in scope, no violation of what has traditionally been the subject of international law is claimed. International law includes more than international treaties. *See, e.g., Estate of Marcos*, 978 F.2d at 499 (official torture); *Filartiga v. Pena-Irala*, 630 F.2d 876, 880 (2nd Cir.1980) (same). But looting of a bank by its insiders, and misrepresentations about the bank's financial condition, have never been in the traditional classification of international law. These are garden variety violations of statutes, banking regulations, and common

law. We agree with the view of the Second Circuit, as stated in *IIT*:

> [w]e cannot subscribe to plaintiffs' view that the Eighth Commandment "Thou shalt not steal" is part of the law of nations. While every civilized nation doubtless has this as a part of its legal system, a violation of the law of nations arises only when there has been "a violation by any one or more individuals of those standards, rules or customs (a) affecting the relationship between states or between an individual and a foreign state, and (b) used by those states for their common good and/or in dealings *inter se*."

IIT, 519 F.2d at 1015 (quoting *Lopes v. Reederei Richard Schroder*, 225 F. Supp. 292, 297 (E.D.Pa.1963)). That case was conceptually similar to the case at bar, in that it alleged an international scheme of fraud, conversion and corporate waste. *See also Filartiga*, 630 F.2d at 888-89 (distinguishing official torture, actionable under Alien Tort statute, from *IIT*). The standards alleged to have been violated by the defendants in the case at bar are not of a kind affecting the relationship between states or between an individual and a foreign state, and used by those states for their common good in dealings *inter se*.

Our reasons for adopting the *IIT* rule are well stated in *Filartiga*:

> The requirement that a rule command the "general assent of civilized nations" to become binding upon them all is a stringent one. Were this not so, the courts of one nation might feel free to impose idiosyncratic legal rules upon

> others, in the name of applying international law.

Filartiga, 630 F.2d at 881.

> Because appellants' claims of fraud, breach of fiduciary duty, and misappropriation of funds are not appropriately considered breaches of the "law of nations" for purposes of jurisdiction under the Alien Tort Statute, Count IV was properly dismissed.

D. RICO

Most of the complaint purports to allege civil RICO claims. The statute provides that "[a]ny person injured in his business or property by reason of a violation of [18 U.S.C. § 1962]" has a cause of action for which treble damages may be recoverable. 18 U.S.C. § 1964(c). Appellants allege that they were depositors in BCCI, and that because it violated the law and collapsed, it failed to pay them the money they were entitled to as depositors. Appellants allege that all four subsections of section 1962[3] were violated by some or all defendants, by means

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[3] Section 1962(a) provides that it is "unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity . . . to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce."

Section 1962(b) provides that it is "unlawful for any person through a pattern of racketeering activity . . . to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce."

of predicate acts ranging from wire and mail fraud to drug transactions and weapons dealing. The defendants include seventy-seven firms and individuals alleged to have looted the bank for personal gain, caused it to loan its money to criminals, caused it to appear more sound than it was to bank regulators, and otherwise to have contributed to its wrongful conduct or its inability to pay its depositors. The bank itself is not a defendant.

In order to plead a civil RICO claim, appellants must show that the defendants' violation of section 1962 was the proximate cause of their injury. *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 268, 112 S.Ct. 1311, 1317, 117 L.Ed.2d 532 (1992); *Pillsbury, Madison & Sutro v. Lerner*, 31 F.3d 924, 928 (9th Cir.1994). Some of the wrongs alleged would tend to increase rather than reduce the ability of the bank to pay its debts. For those wrongs, the appellants have alleged no proximate cause linking the RICO violations with injury to their property.

Appellants have also pleaded various wrongs which had the effect of making BCCI less able to pay its debts. As depositors, the members of the appellant class are creditors of BCCI. *Bank of Marin v. England*, 385 U.S. 99, 101, 87 S.Ct. 274, 276, 17 L.Ed.2d 197 (1966); *Brown v. New York Life Ins. Co.*, 152 F.2d 246, 249 (9th Cir.1945). They

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Section 1962(c) provides that it is "unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity. . . ."

Finally, section 1962(d) provides that it is "unlawful for any person to conspire to violate" the preceding three subsections.

allegedly loaned money to BCCI which, because of various wrongs by defendants, it was unable to pay back. To the extent that the alleged wrongs reduced the ability of the bank to pay its debts, or caused it to be in business for a longer time than it should have been so that it could continue to borrow money from depositors fooled about its true condition, the wrongs would have the practical consequence of harming the depositors.

The question is whether persons whose injury is in this manner indirect have standing to assert a RICO claim. BCCI, the allegedly dishonest and defaulting debtor, is not a defendant. Instead, other people and firms, who allegedly contributed to BCCI's condition, but who themselves had no direct relationship to the appellants and caused them no direct harm, are the defendants. Suppose the "BCCI pirates" looted the bank just as the complaint says. Can a depositor in a bank sue a bank robber?

The standing question has been answered persuasively by the Third Circuit, in *Popkin v. Jacoby (In re Sunrise Sec. Litig.)*, 916 F.2d 874, 880 (3d Cir.1990). In that case too, depositors of a failed bank sued the insiders whom they claimed looted it and misrepresented its condition. The claims were substantially the same as in the case at bar:

> The essence of the complaint is that defendants misrepresented the financial condition of [the bank] by failing to disclose that they had mismanaged [the bank] rendering the institution

> insolvent, and that they had employed deceptive operating practices, which prevented federal and state regulators from acting in a timely manner to forestall the insolvency of [the bank].

Id. at 883. The Third Circuit held that depositors asserting a RICO claim because the bank had become unable to pay its debts should be treated the same as shareholders in a corporation. For both classes, where the harm is to all the members, and the injuries claimed by the plaintiffs are not separate and distinct from those to shareholders or depositors generally, the RICO claim is derivative and there is no standing on the part of the shareholders or depositors to assert it.

The Second Circuit has ruled the same way.

> As a general rule, wrongdoing by bank officers that adversely affects all depositors creates a liability which is an asset of the bank, and only the bank or its receiver may sue for its recovery.

Adato v. Kagan, 599 F.2d 1111, 1117 (2d Cir.1979).

Sunrise's analogy to shareholder suits is sound. Creditors of a bankrupt corporation generally do not have standing under RICO. *Manson v. Stacescu*, 11 F.3d 1127, 1130 (2d Cir.1993). "The creditor generally sustains injury only because he has a claim against the corporation. The creditor's injury is derivative of that of the corporation and is not caused proximately by the RICO violations." *Id.* When a creditor suffers injury that is "independent of the firm's fate," his injury is direct and he may pursue his own remedy; otherwise the injury is derivative and the creditor must take this "place in line" as a creditor in the bankruptcy action. *Mid-State Fertilizer Co. v. Exchange*

Nat'l Bank of Chicago, 877 F.2d 1333, 1336-37 (7th Cir.1989). *Cf. Sparling v. Hoffman Constr. Co., Inc.*, 864 F.2d 635, 640 (9th Cir.1988) (shareholder lacks standing to assert RICO claim unless he shows either an injury distinct from that to other shareholders or a special duty owned by the defendant to the shareholder).

The rationale supporting the analogy is compelling. "[P]ermitting depositors to bring individual actions for such injuries [ ] would invariably impair the rights of other general creditors and claimants with superior interests." *Sunrise*, 916 F.2d at 887. Under the facts of *Sunrise*,

> continuation of plaintiffs' suit could disrupt the efforts of FDIC to recover the [bank's] assets, which were depleted by defendants' mismanagement and wrongdoing, for equitable distribution among all depositors and creditors in accordance with the federal priority scheme. . . . According to the FDIC, permitting plaintiffs to sue directly for claims emanating from injury to the [bank] would circumvent the priority scheme by enabling depositors to recover the [bank's] assets in advance of other general creditors and claimants with superior interests, such as secured creditors. This result, argues FDIC, is both inequitable and inefficient, and threatens to further complicate the immense task of liquidating the [bank's] assets.

Id. at 888-89 (emphasis in original). The Seventh Circuit has made the same point in the context of a shareholder's RICO claim, noting that allowing the derivative suit

would lead to double counting of damages and would interfere with an equitable liquidations process:

> Recovery by the firm, followed by division according to entitlements, is especially important when the firm has landed in bankruptcy. Suits by shareholders, guarantors, and the like may well be efforts to divert the debtor's assets – to pay off one set of creditors . . . while keeping the proceeds out of the hands of the firm's other creditors.

Mid-State, 877 F.2d at 1336.

This line of reasoning applies fully to the case at bar. BCCI is being liquidated in international proceedings in Luxembourg. Its assets located in the United States have been forfeited and are subject to control of the Justice Department. The appellants in this case have claims similar to those of many other potential claimants. Their claims, if allowed in this lawsuit, would enable them to jump ahead of other creditors in priority and obtain greater shares of the failed bank's assets and of the assets of any wrongdoers who may owe money to the failed bank on account of their wrongs. *See United States v. BCCI Holdings (Luxembourg), S.A.*, 46 F.3d 1185 (D.C.Cir.1995). Half of the sums recovered will be surrendered to a global liquidation fund set up to facilitate a "general global distribution to creditors and depositors." *Id.* at 1187. The other half has been reserved for the Attorney General's discretionary allocation to purposes including offsetting losses to the Federal Deposit Insurance Corporation, *id.*, and "protect[ing] the rights of innocent persons." *Id.* at 1192, *quoting* 18 U.S.C. § 1963(g)(1). Recently, these appellants attempted to convince one of our sister

circuits that they were entitled to an interest in the property so forfeited, the "nature and extent" of which interest could be found in the complaint filed in the case at bar. *Id.* at 1188. Appellants' attempt to jump in line ahead of other creditors was rebuffed in that case, and it is rebuffed here.

Appellants would have us distinguish *Sunrise* and the other cases on derivative claims, on the basis of *Hayes v. Gross*, 982 F.2d 104 (3d Cir.1992). In *Hayes*, purchasers of stock alleged that they paid too much because of fraud on the market, and sued the officers and directors of the corporation under the Securities and Exchange Act of 1934. The Third Circuit distinguished *Sunrise*, and held that the claim was not derivative. It reasoned that the injury claimed was distinct from the injury to the corporation and the indirect injury to stockholders generally, and also that the claim would neither prejudice the corporation and its other stockholders nor permit a double recovery for the same injury. In that case, the harm would of course be only to the shareholders who bought in a market tainted by the misrepresentations, not to those who had bought before, and not to the corporation. We need not decide whether we would follow *Hayes*, because the facts of the case at bar are analogous to *Sunrise*, not *Hayes*.

Because the RICO claims were all properly dismissed for lack of standing, as derivative, we do not reach the questions raised by the parties as to the extraterritorial reach of RICO. We understand the argument to be whether Congress has the power to regulate the foreign conduct at issue, not whether the district court had jurisdiction to decide whether a claim upon which relief could

be granted had been pleaded. We assume without deciding that RICO would apply to the foreign wrongs. We do not reach the other rationales articulated by the district court as a basis for dismissal.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AKHTAR HAMID, on Behalf of Himself and all Others Similarly Situated, Plaintiffs-Appellants, v. PRICE WATERHOUSE, et al., Defendants-Appellees.	No. 92-56085 92-56198, 92-56199 D.C. No. CV-91-4483-CBM ORDER

Before: BROWNING, BOOCHEVER and KLEINFELD, Circuit Judges.

The panel has voted to deny the petition for rehearing.

Judge Browning and Judge Kleinfeld vote to reject the suggestion for rehearing en banc, and Judge Boochever so recommends.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. Civ. P. 35.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

In re BANK OF CREDIT AND COMMERCE INTERNATIONAL DEPOSITORS LITIGATION	No. MDL-908 No. CV 91-4483 CBM (Ex)
AKHTAR HAMID, et al., Plaintiffs, v. PRICE WATERHOUSE & CO., et al., Defendants.	ORDER VACATING MEMORANDUM OPINION; AMENDED MEMORANDUM OPINION

Upon review of the Court's Memorandum Opinion, the Court has discovered the following clerical errors:

1. On page 4, line 17 "million" should read "billion."

2. On page 19, line 4 "million" should read "billion."

In order to correct these clerical errors, the Court hereby vacates its Memorandum Opinion pursuant to Federal Rule of Civil Procedure 60(a) and issues the following Amended Memorandum Opinion.

AMENDED MEMORANDUM OPINION

These matters came on regularly for hearing on March 30, 1992 before the Court, the Honorable Consuelo B. Marshall, District Judge presiding, on plaintiffs' motion to add additional parties, brought pursuant to Rules 15 and 21 of the Federal Rules of Civil Procedure, and defendants' motions to dismiss plaintiffs' third amended complaint (the "Complaint"), brought pursuant to Rules 9(b), 12(b)(1), and 12(b)(6) of the Federal Rules of Civil Procedure.[1] Also pending resolution are issues

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[1] These include: (a) the motion of defendants Bank of America NT&SA and BankAmerica Corporation (collectively "BofA") to dismiss; (b) the motion of defendant Price Waterhouse U.K. ("PW/UK") to dismiss; (c) the motion of defendant Price Waterhouse U.S. ("PW/US") to dismiss; (d) the motion of defendant Price Waterhouse World Firm Ltd. to dismiss and to strike; (e) the motion of defendants Clark Clifford, Robert Altman, and the law firm of Clifford & Warnke (collectively the "Clifford Defendants") to dismiss; (f) the motion of defendants InterRedec, Inc., InterRedec Southern Co., Inc., Wesley Co., Inc., River Oaks, Inc., River Oaks Investments, Inc., Sterling Bluff, Inc., Concorde Finance & Investments, and GRP Investments N.V. (collectively the "InterRedec Defendants") to dismiss; (g) the motion of defendants First American Corporation, First American Bankshares, Inc., Jack W. Beddow, Paul G. Adams, III, and A. Vincent Scoffone (collectively the "First American Defendants") to dismiss; (h) the motion of defendant Ernst & Young U.S. ("E&Y") to dismiss; (i) the motion of defendant Fulvio Dobrich to dismiss; (j) the motion of defendant Abu Dhabi Investment Authority ("ADIA") to dismiss; and (k) the motion of defendant Hill & Knowlton, Inc. ("H&K") to dismiss. Additionally, putative defendants Paul C. Warnke, John F. Kovin, David I. Granger, Harold D. Murry, Jr., John G. Calendar, J. Griffin Lesher, Bryan Jay Yolles, Robert P. Reznick, Philip H. Hecht, and James C. Duff, all partners in Clifford & Warnke, have filed a motion to dismiss. However, plaintiffs added these

raised in defendant PW/UK's motion which the Court took under submission on January 15, 1992 (*i.e.*, whether to dismiss for lack of subject matter jurisdiction, on forum non conveniens grounds, or to abstain). Having considered the papers filed in connection with the motions and the arguments of counsel at hearing, the Court issues the following memorandum opinion.

I. STATEMENT OF FACTS

On July 5, 1991, banking regulators in the United Kingdom, Luxembourg, and the Cayman Islands seized the operations of the Bank of Credit and Commerce International.[2] At the time it was closed, BCCI operated 400 branches in over 70 countries and was the fifth largest private bank in the world. BCCI, S.A. will not reopen and is "hopelessly insolvent"; depositors' funds are frozen and unavailable. Potential claims against BCCI exceed its remaining assets, but the cooperative effort of liquidators in the United Kingdom, Luxembourg, and the Cayman Islands has resulted in a proposed settlement with BCCI's majority shareholders, Sheikh Zayed and the government

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individuals to the Complaint without first seeking leave of the Court to amend. Thus, neither these individuals, nor the motion they have filed, are presently before the Court.

[2] Related entities include Bank of Credit and Commerce International, S.A., Bank of Credit and Commerce International (Overseas) Ltd., Bank of Credit and Commerce International Holdings (Luxembourg) S.A., International Credit and Investment Company (Overseas) Ltd., International Credit and Investment Company Holdings, and Credit and Commerce American Holdings, N.V. and its subsidiary Credit and Commerce American Investment, B.V. (collectively "BCCI").

of Abu Dhabi. The settlement contemplates a cash payment by Abu Dhabi of $ 2.2 billion, which would result in a distribution to depositors of between 25 and 40 percent of the deposits they lost.[3]

In the United States, BCCI operated agency offices at one time in Los Angeles, San Francisco, and Beverly Hills, California; Boca Raton, Miami, and Tampa, Florida; Houston, Texas; Chicago, Illinois; New York City, New York; and Washington, D.C. At the time BCCI was closed by regulators, only the Los Angeles and New York offices were operating. Plaintiffs allege that BCCI solicited and obtained deposits in the United States through these agency offices. *See* Complaint, ¶¶ 33, 289(g). Presently, the Superintendents of Banking of New York and California have seized BCCI assets and are proceeding to settle depositor claims. BCCI assets being marshalled in the United States far exceed potential claims and only the excess will be turned over to the foreign BCCI liquidators. As a result, no BCCI depositors who had money in United States offices on July 5, 1991 will lose their deposits.[4]

Plaintiffs purport to represent approximately 1 million BCCI depositors worldwide who have lost $ 6 billion

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[3] Many additional factors will affect depositors' ultimate recovery. For example, liquidators are presently pursuing additional claims on behalf of BCCI, including claims filed against both E&Y and various Price Waterhouse entities.

[4] Plaintiffs have not argued otherwise. They contend, however, that United States depositors presently suffer the loss of the use of their money, have suffered that loss since July 5, 1991, and will not recover interest on their deposits for this time.

as a result of the financial collapse and regulatory seizure of BCCI. Named plaintiffs consist of United States citizens (Hamid, Curran, Khorassanchy, and Chawla);[5] United States corporations (Soha, Inc. and Idriss Devco, Inc.); foreign corporations (S&L Gentrade, Inc. and Red Circle Investments, Ltd.); and foreign residents (Musleh, Hermans, Hasim, and Murbarek). Plaintiffs have named seventy-seven defendants on the basis of their various relationships to BCCI.[6] BCCI itself is not a defendant here because of international liquidation proceedings and a resulting bankruptcy stay entered in the United States. *See In re Petition of Brian Smouha*, No. 91-B-13569 (S.D.N.Y. Bankr.).

Plaintiffs' initial complaint alleged four claims for relief: Counts One through Three were brought under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. sections 1962(a)/(d),[7]

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[5] Additionally, United States Citizens Philip Merz and Amit Pandya seek to be added to this action as plaintiffs.

[6] Plaintiffs characterize defendants as either (1) BCCI strawmen/frontmen or looters; (2) BCCI owners or founders; (3) BCCI officers or agents; (4) United States assistors or co-conspirators; (5) other United States instrumentalities; and (6) professional service providers to BCCI (*i.e.*, accountants, lawyers, and public relations firm). *See* Complaint, chart following page 47.

[7] Subsection (a) of 18 U.S.C. § 1962 provides:

> It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity . . . to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise . . . .

(c)/(d),[8] & (b)/(d);[9] Count Four alleged a claim under the Alien Tort Statute, 28 U.S.C. § 1350.[10] On January 15, 1992, the Court issued its Order Re Dismissal and a More Definite Statement (the "Order"), in which the Court dismissed Count Four without leave to amend, but gave plaintiffs leave to amend the RICO claims contained in their 212-page second amended complaint.[11] In response to the Court's Order, plaintiffs filed their 482-page Complaint on January 20, 1992, attaching (and, in many cases, incorporating by reference) 2003 additional pages of exhibits.

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[8] Subsection (c) of 18 U.S.C. § 1962(c) provides:

> It shall be unlawful for any person employed by or associated with any enterprise . . . to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity . . . .

[9] Subsection (b) of § 1962 provides:

> It shall be unlawful for any person through a pattern of racketeering activity . . . to acquire or maintain, directly or indirectly, any interest in or control of any enterprise . . . .

[10] Section 1350 provides a remedy in federal court for "any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." By its terms, the Alien Tort Statute only imposes liability for violation of a treaty or the law of nations. *See Filartiga v. Pena-Irala*, 630 F.2d 876, 887-88 (2d Cir. 1980).

[11] Part of the Order was adapted from a RICO Standing Order or Case Statement issued by Judge Krenzler in *Lyman Steel Co. v. Shearson Lehman Bros., Inc.*, No. C 86-355 (N.D. Ohio Feb. 13, 1986). A similar RICO Case Statement must now accompany all RICO filings in the Southern District of California. *See* General Order No. 386, 92 Daily Journal D.A.R. 883 (Jan. 22, 1992).

The facts alleged in plaintiffs' Complaint fall into three categories: (1) BCCI's involvement in various criminal activities; (2) regulatory violations stemming from BCCI's secret ownership and control of several United States financial institutions;[12] and (3) the worldwide fraud perpetrated upon depositors, which ultimately ended in the financial collapse of BCCI. In response to the Court's Order,[13] plaintiffs allege that the defendants' violations of RICO caused them to lose their deposits as follows:

> (a) depositors were defrauded into placing their deposits into a criminal enterprise instead of a legitimate bank because BCCI falsely represented that it had substantial assets, profitability, a lawful operation and would be able to honor depositors' claims;
>
> (b) the ongoing existence of BCCI's criminal enterprise would not have been possible had

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[12] BCCI's financing of "fronts" or strawmen – wealthy businessmen and rulers of middle eastern states – permitted BCCI to surreptitiously acquire and control defendant First American Bank (400 branches in six states, based in Washington, D.C.); the National Bank of Georgia (the largest bank in Georgia); CenTrust Savings (20 branches in Florida); Independence Bank (11 branches, based in Encino, California; now insolvent and voluntarily dismissed by plaintiffs as a defendant in this case), and Viking Savings & Loan (Santa Monica, California).

[13] The Court ordered plaintiffs, by appending paragraphs 342, 350 and 358 of the Complaint, to "describe the causal relationship between plaintiffs' alleged injury and *each* defendants' violation of [RICO]." *See* Order, ¶¶ 10(L), (M), and (N) (emphasis in original).

the defendants not helped BCCI continue to operate;[14]

(c) as a continuing operation, BCCI continued to accept plaintiffs' deposits; and

(d) because of defendants' racketeering acts (which constituted the operation of BCCI), banking regulators seized BCCI on July 5, 1991, freezing depositors' funds and causing their present losses.

See Complaint, ¶¶ 342, 350, 358.

II. ANALYSIS

A. SUFFICIENCY OF PLAINTIFFS' ALLEGATIONS

On a motion to dismiss for failure to state a claim upon which relief can be granted brought pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the complaint must be construed in the light most favorable to the non-moving party and all of the allegations contained in the complaint are taken as true. *Jenkins v. McKeithen*, 395 U.S. 411, 421-22, 89 S. Ct. 1843, 23 L.Ed.2d 404, *reh'g denied*, 396 U.S. 869, 90 S. Ct. 35, 24 L.Ed.2d 123 (1969)[15] A Rule 12(b)(6) motion to dismiss should be granted only if "it appears beyond a reasonable doubt

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[14] The alleged assistance provided by the defendants includes the defendants' failure to publicly disclose BCCI's true nature and their assistance helping BCCI avoid detection by regulators.

[15] However, the Court does not "necessarily assume the truth of legal conclusions merely because they are cast in the form of factual allegations." *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir.), *cert. denied*, 454 U.S. 1031, 102 S. Ct. 567, 70 L.Ed.2d 474 (1981).

that the plaintiff can prove no set of facts which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 2 L.Ed.2d 80 (1957).

Despite these liberal pleading standards, certain types of pleadings require more particularity. Rule 9(b) of the Federal Rules of Civil Procedure provides that "[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." Allegations of fraud require the pleader to detail with particularity the time, place, and manner of each act of fraud, plus the role of each defendant in each fraudulent scheme. *Lancaster Community Hosp. v. Antelope Valley Hosp. Dist.*, 940 F.2d 397, 405 (9th Cir. 1991), *cert. denied*, 112 S. Ct. 1168, 117 L.Ed.2d 414 (1992); *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393 (9th Cir. 1986).

Rule 9(b) ensures that allegations of fraud are specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged so that they can defend against the charge and not just deny that they have done anything wrong. *Semegen v. Weidner*, 780 F.2d 727, 731 (9th Cir. 1985).[16] "[P]leading is

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[16] Rule 9(b) serves three purposes: (1) providing a defendant fair notice of the plaintiff's claim, thus enabling the defendant to prepare a defense; (2) protecting a defendant from harm to his reputation or goodwill; and (3) reducing the number of strike suits. *Di Vittorio v. Equidyne Extractive Indus., Inc.*, 822 F.2d 1242, 1247 (2d. Cir. 1987) (citing *Reingold v. Deloitte Haskins & Sells*, 599 F. Supp. 1241, 1266 (S.D.N.Y. 1984) (Rule 9(b) "inhibits the filing of a complaint as a pretext for discovery of unknown wrongs.").

sufficient under Rule 9(b) if it identifies 'the circumstances constituting fraud so that the defendant can prepare an adequate answer from the allegations.' " *Id.* at 735 (citation omitted). When the alleged conduct upon which a RICO claim are fraud-type predicate offenses, Rule 9(b)'s requirement of pleading particularity applies to those allegations. *Moore v. Kayport Package Express, Inc.*, 885 F.2d 531, 541 (9th Cir. 1989).

Most of the moving defendants continue to protest what they consider a dearth of allegations specifying their role in the alleged wrongdoing.[17] However, the Court is satisfied that plaintiffs' Complaint alleges with sufficient particularity the basis for each defendants' inclusion in plaintiffs' suit. Indeed, many of plaintiffs' allegations clearly and painstakingly detail defendants' involvement with BCCI.

Additionally, plaintiffs' prior use of inherently ambiguous names such as "Price Waterhouse" and "Ernst & Young" in previous pleadings is not repeated in the Complaint. Plaintiffs have complied with the Court's Order to "distinguish between the separate firms of each

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[17] For example, the public relations firm H&K complains that it is only alleged to have distributed a "fact sheet" in response to a magazine article about BCCI. *See* Complaint, ¶¶ 36, 334. Defendant Dobrich notes that he is only alleged to have been hired as an executive of Independence Bank in mid-1989, although plaintiffs' conspiracy allegations span sixteen years. *See* Complaint, Ex. 23. E&Y objects to its inclusion in charged misconduct that occurred over unspecified or broad spans of time, particularly since E&Y resigned as BCCI's auditor in 1987 and none of the alleged losses occurred until 1991.

organization . . . . " *See* Order, ¶ 10(B).[18] In addition to making distinctions between the accounting firm entities, plaintiffs also sufficiently allege an agency relationship between the different entities and are entitled to proceed on that basis as well.

The Court further concludes that plaintiffs adequately allege both conspiracy and aiding and abetting liability. Consequently, these allegations bar the independent evaluation of each defendants' isolated role in BCCI's collapse urged by the defendants because the Court cannot dismiss defendants who are sufficiently alleged to have been co-conspirators with those defendants whose predicate acts caused plaintiffs' injuries. *See Beltz Travel Serv., Inc. v. International Air Transport Ass'n*, 620 F.2d 1360, 1367 (9th Cir. 1980) (all conspirators are liable for the acts of their co-conspirators).

B. PLAINTIFFS' RICO CLAIMS

1. Plaintiffs' Alleged RICO Enterprises

Plaintiffs clearly state that their alleged RICO enterprises are both identical to the pattern of racketeering activity. *See* Complaint, ¶¶ 339 (BCCI enterprise and pattern, as well as associated-in-fact enterprise and pattern,

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[18] Though the defendant accounting firms contend that plaintiffs have merely substituted "PW/UK, PW/US and PW/Luxembourg" for each previous instance of "Price Waterhouse" and "EY/US, EY/UK, and EY/Luxembourg" for each previous instance of "Ernst & Young," not all allegations contain all three entities. Plaintiffs have made some distinctions between the entities in the Complaint.

are "one in the same"), 340(b) (BCCI enterprise and association-in-fact enterprise are both "synonymous with the pattern of illegal racketeering"), 347, 348(b), 355, & 356(b). Plaintiffs' failure to allege an ascertainable structure to the RICO enterprises – separate and apart from the pattern of racketeering activity – is fatal to the allegations of these enterprises. As the Ninth Circuit noted in *United Energy Owners Comm., Inc. v. United States Energy Management Sys., Inc.*, 837 F.2d 356, 362 n.13 (9th Cir. 1988),

> [t]he *Allington* [*v. Carpenter*, 619 F. Supp. 474 (C.D. Cal. 1985)] court correctly noted that under [*United States v.*] *Turkette* [452 U.S. 576, 101 S. Ct. 2524, 69 L.Ed.2d 246 (1981),] every private plaintiff asserting a violation of RICO section 1962(c) must "plead an enterprise apart from the underlying pattern of racketeering activity." 619 F. Supp. at 469 (citing *United States v. Bledsoe*, 674 F.2d 647, 665 (8th Cir.) (RICO enterprise must have "an 'ascertainable structure' distinct from that inherent in the conduct of a pattern of racketeering activity."), *cert. denied*, 459 U.S. 1040, 103 S. Ct. 456, 74 L.Ed.2d 608 (1982)).

See also Sigmond v. Brown, 645 F. Supp. 243, 246 (C.D. Cal. 1986), *aff'd*, 828 F.2d 8 (9th Cir. 1987) (no separate enterprise where plaintiff had stated that the sole purpose of the enterprise was to conduct the alleged racketeering activity). Thus, plaintiffs' RICO claims fail to state a claim because the alleged enterprises have no ascertainable

structure distinct from the alleged pattern of racketeering activity.[19]

2. Plaintiffs' "Reinvestment Injury" Claim Under Section 1962(a)

Plaintiffs' section 1962(a) RICO claim is based solely on the use or investment, more accurately characterized as "reinvestment," of racketeering income by defendants in their own continuing operations. *See* Complaint, ¶ 341(f).[20] The causal nexus to plaintiffs' injury alleged by plaintiffs is that the reinvestment of racketeering income in each defendants' own operations permitted each defendant to continue to exist and engage in the illegal conduct which permitted BCCI to continue to operate without detection and solicit deposits from plaintiffs. Plaintiffs rely upon *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393 (9th Cir. 1986), to argue that each defendants' reinvestment of racketeering income in its own operation states a claim under section 1962(a). *See id.*

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[19] The Court's dismissal of substantive RICO claims constitutes a dismissal of the conspiracy alleged under section 1963(d) as well. *See Condict v. Condict*, 826 F.2d 923, 927 (10th Cir. 1987) ("any claim under section 1962(d) based on a conspiracy to violate the provisions of 18 U.S.C. section 1962(a), (b), or (c) must necessarily fail if the substantive claims are themselves deficient").

[20] The Court's Order required plaintiffs to amend paragraph 341 of the pleading and "(i) [s]tate specifically who received income derived from the pattern of racketeering activity; (ii) [d]escribe the use or investment of such income and the enterprise in which it was used or invested; and (iii) [s]tate specifically how the victims were injured by reason of the use or investment of racketeering income." Order, ¶ 10(H).

at 1398 ("Logic dictates that a corporation, receiving income from a pattern of racketeering in which it has participated as a principal, can invest that income in its own operations.") (citing *Pennsylvania v. Derry Constr. Co.*, 617 F. Supp. 940, 943 (W.D. Pa. 1985)). The *Schreiber* court expressly held that "where a corporation engages in racketeering activities and is the direct or indirect beneficiary of the pattern of racketeering activity, it can be both the 'person' and the 'enterprise' under section 1962(a)." *Id.*

However, a question not considered by *Schreiber* is whether reinvestment can cause plaintiffs' injury in a section 1962(a) claim. Section 1964(c) of RICO provides a private right of action to persons injured "by reason of a violation of section 1962." In *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 105 S. Ct. 3275, 3285-86, 87 L.Ed.2d 346 (1985), the Supreme Court held that a plaintiff has standing to bring a RICO claim under section 1962(c) only to the extent that the conduct constituting the RICO violation caused injury to his business or property. Thus, under section 1962(c), an allegation of a pattern of racketeering activity which causes injury to plaintiff sufficiently states a cause of action.

By contrast, the gravamen of the offense under Section 1962(a) is not the underlying racketeering activity itself, but the subsequent use and investment of proceeds obtained through the racketeering activity. Thus, to state a claim under section 1964(c) for a violation of section 1962(a), plaintiffs must allege injury by the use or investment of the proceeds of racketeering activity. *See, e.g., Ouaknine v. MacFarlane*, 897 F.2d 75, 82 (2d Cir. 1990); *Rose v. Bartle*, 871 F.2d 331, 357-58 (3d Cir. 1989); *Grider v. Texas Oil & Gas Corp.*, 868 F.2d 1147, 1149 (10th Cir.), *cert.*

denied, 493 U.S. 820, 110 S. Ct. 76, 107 L.Ed.2d 43 (1989); *U.S. Concord, Inc. v. Harris Graphics Corp.*, 757 F. Supp. 1053, 1060 (N.D. Cal. 1991); *In re U.S. Grant Hotel Assoc. Ltd. Sec. Litig.*, 740 F. Supp. 1460, 1469 (S.D. Cal. 1990). *Contra In re National Mortgage Equity Corp. Mortgage Pool Certificates Sec. Litig.*, 682 F. Supp. 1073 (C.D. Cal. 1987) ("*NMEC*").[21]

Plaintiffs assert that defendants' reinvestment in their own operations perpetuated the RICO enterprise and permitted the racketeering activity to continue. *See* Complaint ¶ 341(f). This reinvestment injury theory is simply another way of stating that the predicate acts caused plaintiffs' injury and does not state an injury separately stemming from the reinvestment sufficient to state a claim under section 1962(a). *See U.S. Concord, Inc.*, 757 F. Supp. at 1060; *Williamson v. Simon & Schuster*, 735 F. Supp. 565, 568 (S.D.N.Y. 1990). For these reasons, plaintiffs' section 1962(a) claim is dismissed without leave to amend.[22]

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[21] The Ninth Circuit declined to reach this issue in *Reddy v. Litton Indus., Inc.*, 912 F.2d 291 (9th Cir. 1990), *cert. denied*, 112 S. Ct. 332, 116 L.Ed.2d 272 (1991), but recognized that three of four circuit courts and a majority of district courts have required section 1962(a) plaintiffs to show injury from the use or investment of racketeering income rather than from the predicate acts alone. *Id.* at 295-96. The court also noted that Judge Tashima acknowledged the split of opinion on the issue and that his opinion in *NMEC*, 682 F. Supp. at 1073, was issued without the benefit of the appellate decisions in the Second, Third, and Tenth Circuits. *Reddy*, 912 F.2d at 296 n.6.

[22] In response to defendants' objections that they had not invested in BCCI, the Court previously observed that the complaint sufficiently alleged the use or investment of income in an

C. ARE PLAINTIFFS' CLAIMS DERIVATIVE OR DIRECT?

Defendants contend that plaintiffs lack standing because their claims are derivative of BCCI rather than direct.[23] Plaintiffs do not contest the legal principles cited by defendants; rather, plaintiffs merely insist that their claims are direct. However, plaintiffs' RICO claims are derivative of BCCI and plaintiffs lack standing to prosecute them. *See, e.g., Adato v. Kagan*, 599 F.2d 1111, 1117 (2d Cir. 1979) (citing 1 Michie, *Banks and Banking* § 69 at 289-91 (1973), for the general rule that "wrongdoing by bank officers that adversely affects all depositors creates a liability which is an asset of the bank and only the bank or its receiver may sue for its recovery."); *Sax v. World Wide Press, Inc.*, 809 F.2d 610, 613 (9th Cir. 1987) (citing 12B W. Fletcher, *Cyclopedia of the Law of Private Corporations*, § 5911 (rev. perm. ed. 1984), for the general rule that "an action enforces a corporate right 'if the gravamen of the complaint is injury to the corporation, or to the whole body of its stock or property without any severance or

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enterprise under § 1962(a), "at least to the extent the enterprise is defined as the associated-in-fact enterprise consisting of the BCCI Banks and the defendants listed in the complaint." Order, ¶ 3. The Court did not thereby determine that this claim was legally sufficient in all respects; the present challenge to the legal sufficiency of the claim was not before the Court.

[23] This issue is a question of law for the Court. *See In re Sunrise Sec. Litig.*, 916 F.2d 874, 882 (3d Cir. 1990) ("Whether a claim is individual or derivative is determined from the body of the complaint rather than from the label employed by the parties.").

distribution among individual holders.' ");[24] *In re Sunrise Sec. Litig.*, 916 F.2d 874 (3d Cir. 1990) (a depositor's loss in an insolvent institution is a derivative claim that can only be brought on behalf of the institution by the receiver); *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 640-41 (9th Cir. 1988) (dismissing shareholder and guarantor RICO claims because they were derivative).[25]

Cases cited by plaintiffs which permitted direct claims to proceed are all distinguishable. For example, in *Ashland Oil, Inc. v. Arnett*, 875 F.2d 1271, 1279-80 (7th Cir. 1989), the court permitted suit against officers of a bankrupt corporation because the injury suffered by the RICO plaintiffs was significantly different than the injury suffered by creditors in general.[26] Similarly, in *University of*

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[24] Although a depositor is a creditor of a bank or savings and loan, "courts have relied on the principles applicable in shareholder suits in deciding whether depositors and other creditors have stated a claim that may be bought individually." *In re Sunrise Sec. Litig.*, 916 F.2d at 880 (citations omitted).

[25] The Court rejects plaintiffs' argument that RICO's lack of separate standing requirements permits recovery for indirect injury that would otherwise be characterized as derivative. Such a result would impermissibly expand federal jurisdiction over suits that are barred under other substantive legal principles. *See Warren v. Manufacturers Nat'l Bank*, 759 F.2d 542, 545 (6th Cir. 1985).

[26] Indeed, the Seventh Circuit contrasted *Ashland Oil* with the result reached by the district court in *Dana Molded Prods., Inc. v. Brodner*, 58 Bankr. 576 (N.D. Ill. 1986), which barred a RICO claim as derivative because "the predicate acts of racketeering on which plaintiff bases its claim all involve fraudulent transfers of money [from the bankrupt corporation] and the injuries plaintiff asserts are indistinguishable from those suffered by [the bankrupt corporation] itself." *Id.* at 579. *Dana*

Maryland v. Peat Marwick Main & Co., 923 F.2d 265 (3d Cir. 1991), plaintiffs were policyholders of an insolvent insurance company whose RICO claim against the insurer's independent auditors was direct and not derivative based on a breach of duties owed by the defendant directly to the plaintiffs, not to the insolvent insurer. *Id.* at 273. Neither of these cases support a proposition other than that already recognized by the Court: "Absent allegations of a special duty to the depositors or injury distinct from that suffered by other depositors, plaintiffs' claims fail to state a claim upon which relief can be granted." *See* Order, ¶ 2 & n.1 (citing *Sparling*, 864 F.2d at 640).[27]

Molded Products, rather than *Ashland Oil*, is more akin to the facts facing the Court here.

[27] The Court invited plaintiffs to plead the one condition that would permit them to avoid this result: a special duty to the depositors that would give them direct claims. The only other condition that would permit a direct suit – special injury not suffered by all deposits – cannot apply in these circumstances where the plaintiffs are, by definition, the putative class of all depositors. *See* Order, ¶ 2 at 2-3 & n.1.

Plaintiffs allege a "special duty" exists because all the defendants were aware of the criminal conduct of BCCI and the risk to depositors' funds, and since public disclosure of this information would have prevented depositors from placing their funds in BCCI, defendants had a duty to disclose their knowledge of BCCI's fraudulent operation. *See* Complaint, ¶¶ 1(a), 17(b) & (c), 37. Plaintiffs' conclusory statements neither change the character of plaintiffs' claims nor establish that a special duty exists. *See Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981), *cert. denied*, 454 U.S. 1031, 102 S. Ct. 567, 70 L.Ed.2d 474 (1981). Because the plaintiffs have failed to adequately plead a special duty, the Court finds that neither a special duty nor a distinct injury exists that might provide an exception to a bar of plaintiffs' derivative claims.

Plaintiffs also contend that the result reached by the Third Circuit in *Sunrise* does not apply to this case and that *Harmsen v. Smith*, 542 F.2d 496 (9th Cir. 1976), *cert. denied*, 464 U.S. 822, 104 S. Ct. 89, 78 L.Ed.2d 97 (1983), is the controlling precedent.[28] However, *Harmsen* held that a depositor who has lost funds in an insolvent institution as a result of fraud by the bank's officers states a claim for direct injury under the National Bank Act, 12 U.S.C. § 93. Not only is *Harmsen*'s holding expressly limited to actions brought under section 93 of the National Bank Act, *Harmsen*, 542 F.2d at 501-02, but the result in *Harmsen* appears inconsistent with the principles it purports to apply. *See supra*, n.28; *compare Leach v. Federal Deposit Ins. Corp.*, 860 F.2d 1266, 1271-74 (5th Cir. 1988), *cert. denied*, 491 U.S. 905, 109 S. Ct. 3186, 105 L.Ed.2d 695 (1989) (describing its result as consistent with *Harmsen*, the court held that absent special duty or distinct injury, minority shareholder's suit under *both* section 93 of the National Bank Act and RICO is derivative and cannot be maintained).

Finally, plaintiffs contend that *Sparling*'s rule barring derivative suits does not apply where fraud *by* a corporation has occurred, as opposed to fraud *on* a corporation,

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[28] The Third Circuit in *Sunrise* expressly declined to follow *Harmsen*, noting first that the result reached by the Ninth Circuit in *Harmsen* ran counter to the general rule, recognized in *Harmsen*, that shareholders may not recover directly for the injuries sustained by the bank but must demonstrate injury to themselves "as distinct from the bank." *In re Sunrise Sec. Litig.*, 916 F.2d at 886. Further, the Third Circuit observed that the result in *Harmsen* "has not been adopted by other courts." *Id.* at 886 & n.12 (citing cases).

where the corporation may sue to recover for harm done to it. Plaintiffs argue that their claims are direct and appropriate for class-action prosecution under Rule 23 of the Federal Rules of Civil Procedure because (a) unlike those cases finding claims to be derivative, no liquidator exists to prosecute BCCI claims; (b) even if such a trustee existed, claims belonging to the depositors could not be prosecuted by such a trustee; and (c) prosecution by the trustee of the depositors' claims would be subject to an *in pari delicto* defense, since BCCI was not a victim but a perpetrator.

a. **Existing Receiver.** Since the assumption of a receiver who will represent the depositors' interest underlies all of the cases holding claims to be derivative, plaintiffs contend that the cases are inapposite because no liquidator exists that will prosecute the claims of BCCI. This assertion is belied by the appointment of the Joint Provisional Liquidators by the High Court in London. Plaintiffs' assertion that the liquidators will not prosecute these claims is belied by the proposed settlement with Abu Dhabi for $ 2.2 billion and recent claims filed against Ernst & Young.

b. **Trustee's Standing.** The cases relied upon by plaintiffs, *i.e., Williams v. California 1st Bank*, 859 F.2d 664, 667 (9th Cir. 1988); *Caplin v. Marine Midland Grace Trust Co.*, 406 U.S. 416, 92 S. Ct. 1678, 32 L.Ed.2d 195 (1972); *In re Lendvest Mortgage, Inc.*, [1990 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 73,595 at 97,812 (N.D. Cal. July 27, 1990), are inapposite and involve circumstances where plaintiffs had individual causes of action that could not be pursued by the corporation's representatives on their behalf.

c. ***In Pari Delicto* Defense.** Plaintiffs, relying upon *Cenco, Inc. v. Seidman & Seidman*, 686 F.2d 449 (7th Cir.), *cert. denied*, 459 U.S. 880, 103 S. Ct. 177, 74 L.Ed.2d 145 (1982), contend that where the corporation is the perpetrator of a fraud and benefits from it, the trustee stands in the corporation's shoes and cannot maintain a claim like the one asserted by plaintiffs here. However, the Seventh Circuit later limited the result in *Cenco* to situations where the fraud benefits the corporation. *See Schacht v. Brown*, 711 F.2d 1343, 1347-48 (7th Cir.), *cert. denied*, 464 U.S. 1002, 104 S. Ct. 508, 78 L.Ed.2d 698 (1983); *see also Kempe v. Monitor Intermediaries, Inc.*, 785 F.2d 1443, 1444 (9th Cir. 1986) (in a case "indistinguishable from" *Schacht*, the court found that the liquidator had standing to sue under RICO). Here, BCCI did not benefit from the dissipation of its assets; indeed, plaintiffs' repetitively assert that BCCI is "hopelessly insolvent."[29]

D. SUBJECT MATTER JURISDICTION

Before considering the issues raised by the motions of PW/UK and ADIA to dismiss for lack of subject matter jurisdiction, the Court must first evaluate plaintiffs' claims in light of two requirements imposed by RICO: (1) proximate cause, and (2) cognizable injury.

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[29] Additionally, *in pari delicto* is an equitable defense. When application of the doctrine is not in the public interest, recovery is permitted. *In re Leasing Consultants, Inc.*, 592 F.2d 103, 110 (2d Cir. 1979); *see In re Wedtech Corp.*, 88 Bankr. 619, 622 (Bankr. S.D.N.Y. 1988) ("a trustee's ability to obtain a recovery for an estate and its blameless creditors may not be denied by the prepetition wrongful conduct of the debtor").

1. RICO's Proximate Cause Requirement

Section 1964 of RICO, which provides civil remedies for violation of RICO, states that "[a]ny person injured in his business or property *by reason of* a violation of section 1962 . . . may sue . . . " 18 U.S.C. § 1964(c) (emphasis added). Thus, the harm alleged must be "by reason of," or proximately caused by, the predicate acts. *See Holmes v. Securities Investors Protection Corp.*, 112 S. Ct. 1311, 117 L.Ed.2d 532 (1992); *Brandenburg v. Seidel*, 859 F.2d 1179, 1188 (4th Cir. 1988) (defendant is responsible for injuries flowing from defendant's predicate act liability).

Plaintiffs state a RICO claim only to the extent that the harm they suffer is proximately caused by the predicate acts of racketeering they allege. *Holmes*, 112 S. Ct. 1311, 117 L.Ed.2d 532; *Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 294 (9th Cir. 1990), *cert. denied*, 112 S. Ct. 332, 116 L.Ed.2d 272 (1991); *see also Bastian v. Petren Resources Corp.*, 892 F.2d 680, 686 (7th Cir.), *cert. denied*, 110 S. Ct. 2590, 110 L.Ed.2d 270 (1990) (unless plaintiffs are worse off as a result of defendant's acts than they would have been in the absence of defendant's acts, the causal nexus required is absent); *compare O'Malley v. O'Neill*, 887 F.2d 1557 (11th Cir. 1989), *cert. denied*, 110 S. Ct. 2620, 110 L.Ed.2d 641 (1990); *Burdick v. American Express Co.*, 865 F.2d 527 (2d Cir. 1989); *Sperber v. Boesky*, 849 F.2d 60 (2d Cir. 1988).

Under the circumstances, proximate cause is a question of law for the Court. *Benefiel v. Exxon Corp.*, 92 Daily Journal D.A.R. 3972, 3973 (9th Cir. Mar. 25, 1992) ("[W]here causation cannot reasonably be established under the facts alleged by a plaintiff, the question of

proximate cause is one for the court."); *see Brandenburg*, 859 F.2d at 1189 (proximate cause is a question for the court). Consequently, the Court can determine whether plaintiffs' injuries are sufficiently connected to the alleged RICO predicate acts to state a claim, considering factors such as foreseeability of the particular injury, the intervention of other independent causes, and the factual directness of the causal connection. *Id.* (citing Restatement (Second) of Torts § 548A comments a, b).

Here, plaintiffs allege twenty-eight specific predicate acts of racketeering. *See* Complaint, ¶¶ 350(f)-(ag).[30] Few of these alleged acts, however, have the requisite causal connection to the loss of plaintiffs' deposits. The harm inflicted upon plaintiffs stems solely from the looting of depositors' funds, made possible because of allegedly fraudulent statements made regarding BCCI's financial condition and falsified account information that hid BCCI's true financial condition. *See* Complaint, ¶¶ 350(h); 350(o); 350(ad); 350(af); *see also id.* ¶¶ 291(a)-(x), (aa)-(ao); ¶¶ 296-308. The alleged acquisition of control in United States banks, *id.*, ¶¶ 350(f) & (y), also proximately caused plaintiffs' loss, but only insofar as BCCI dispatched depositors' money to strawmen or frontmen for illegitimate purposes (assuming that the "infiltration of the

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[30] In the Order, the court required plaintiffs to "[a]ppend[ ] paragraph 350 of the complaint" and "describe the causal relationship between plaintiffs' alleged injury and *each* defendants' violation of: (i) specific predicate acts; and (ii) RICO section 1962(c) and (d). Order, ¶ 10(M) (emphasis in original).

United States banking system" resulted in a net cost to BCCI, which is not clear in the Complaint).[31]

On the other hand, the following predicate acts of racketeering, alleging committed by all of the defendants, did not proximately cause plaintiffs' losses:[32]

> (1) acquiring or controlling numerous United States banks, *id.*, ¶ 350(f) & (y), and then covering up that ownership, *id.*, ¶ 350(r);
>
> (2) financing illegal drug transactions, *id.*, ¶ 350(g);
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> (3) smuggling coffee into the United States, *id.*, ¶ 350(i);
>
> (4) assisting former heads of state Manuel Noriega and Alan Garcia to loot the national

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[31] Several alleged predicate acts involving the United States banks obviously enriched BCCI rather than depleted the depositors' funds and could not have caused depositor losses. *E.g.*, *id.*, ¶¶ 350(aa) (causing defendant First American to funnel $ 220 million to BCCI); 350(l) (causing numerous United States banks that BCCI illegally acquired or controlled to make illegal political contributions in order to gain political favor for BCCI).

[32] Plaintiffs also allege, as predicate acts of racketeering, that BCCI bribed Peruvian bankers to obtain deposits from Peru's Central Bank, *id.*, ¶ 350(w) & (ab), and bribed a former BCCI employee in London to keep him from blowing the whistle on BCCI's illegal conduct, *id.*, ¶ 350(ab). However, to qualify as RICO predicate acts, conduct must be indictable or punishable under United States laws. Since bribery under 18 U.S.C. § 201 only applies to "public officials," *see* 18 U.S.C. § 201(a)(1), a group to which Peruvian bankers and London BCCI employees do not belong, this conduct is not racketeering activity under RICO. *See Peters v. Welsh Dev. Agency*, 1991 U.S. Dist, LEXIS 12174 (N.D. Ill. Aug. 29, 1991).

treasuries of Panama and Peru; *id.*, ¶ 350(j), (v) & (ae);

(5) laundering money and improperly pleading guilty to that charge to avoid further prosecution, *id.*, ¶ 350(k) & (ac);

(6) causing the United States banks BCCI illegally acquired or controlled to make illegal political contributions, *id.*, ¶ 350(l);

(7) assisting arms smuggling to Iran, *id.*, ¶ 350(m);

(8) delaying investigation into BCCI's United States conduct by buying political favor, *id.*, ¶ 350(n);

(9) securities fraud committed by CenTrust, *id.*, ¶ 350(p);

(10) falsifying CenTrust's financial condition and artificially inflating CenTrust's financial condition, delaying its regulatory seizure, *id.*, ¶ 350(q) & (z);

(11) illegally funneling $3 million from a telemarketing scheme out of the United States, *id.*, ¶ 350(s);

(12) financing the sale of French-manufactured aircraft owned by Argentina to third world countries, *id.*, ¶ 350(t);

(13) financing international terrorism, *id.*, ¶ 350(u);

(14) assisting in the sale of Jordanian helicopters to Guatemala, *id.*, ¶ 350(x); and

(15) BCCI's illegal acceptance of deposits in its United States agency offices, *id.*, ¶ 350(ag).[33]

Indeed, plaintiffs themselves recognize that the victims of many of these predicate acts were not the depositors but others, including BCCI, *id.*, ¶ 350(h), the government of Peru, *id.*, ¶ 350(v), the American taxpayers, *id.*, ¶ 350(z), and defendant First American. *Id.*, ¶ 350(aa).

By including allegations of BCCI's criminal activities and United States banking violations in the Complaint, plaintiffs purport to have an interest in far more conduct, engaged in by many more defendants, than those which proximately caused the loss of their deposits.[34] To include defendants' United States activity in their causal chain, plaintiffs allege that their injuries were caused by (a) acts of the defendants here in United States that helped avoid detection by United States banking regulators and permitted BCCI's illegal activities in the United States (including the solicitation of deposits) to continue; (b) the eventual discovery by United States regulators of BCCI's

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[33] The fact that BCCI accepted plaintiffs' deposits, whether that transaction is characterized as legal or illegal, will always be a necessary element of any but-for causation link but it is not the proximate cause of plaintiffs' loss. *See Brandenburg*, 859 F.2d at 1189 ("[A]s a factual matter, plaintiffs would not have lost any interest on their deposits but for having made them in the first place.").

[34] For example, though plaintiffs have sought the default of deposed Panamanian dictator Manuel Noriega, Noriega's alleged misconduct, *i.e.*, looting the national treasury of Panama, has no nexus whatsoever to plaintiffs' losses, let alone being the proximate cause of their losses.

illegal conduct in the United States banking industry; and (c) the role of United States regulators in prompting overseas regulators to close BCCI. *See* Complaint, ¶¶ 342, 350, & 358.[35] However, plaintiffs' "causal" allegations implicating the activities of the defendants in the United States and the role United States regulators played in BCCI's seizure do not comport with plaintiffs' factual description of the events leading up to the seizure. *See* Complaint, ¶ 296 at 240 (inquiries from the Bank of England led to the discovery of massive fraud at BCCI and the subsequent regulatory seizure; United States regulators were not involved).[36]

2. Plaintiffs Lack Injuries That Support RICO Claims

Injury is the *sine qua non* of recovery by plaintiffs on their RICO claims. *Kaiser Cement Corp. v. Fischbach & Moore, Inc.*, 793 F.2d 1100, 1104 (9th Cir. 1986), *cert. denied*, 479 U.S. 949, 107 S. Ct. 435, 93 L.Ed.2d 384 (1986) (citing *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 105 S. Ct. 3275, 3286, 87 L.Ed.2d 346 (1985)). Without injury, plaintiffs cannot maintain their RICO claims. *See John L. Motley Assocs., Inc. v. Rumbaugh*, 104 Bankr. 683 (E.D. Pa. 1989)

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[35] These causal allegations were specifically ordered by the Court. *See supra* n.13.

[36] Significantly, no United States representative participated in the College of Regulators, the regulatory body that undertook regulation of BCCI's activities. This substantial regulatory interest by European authorities began as early as 1988, independently of United States regulatory activities. *See* Testimony of Gerald Corrigan before the House Banking Comm. (Sept. 18, 1991) (Abu Dhabi Motion, Ex. 3).

(no standing to assert RICO claim if claim can be satisfied from bankruptcy estate because plaintiff cannot show requisite "injury"); *Banker's Trust Co. v. Rhoades*, 859 F.2d 1096, 1106 (2d Cir. 1988), *cert. denied*, 490 U.S. 1007, 109 S. Ct. 1642, 104 L.Ed.2d 158 (1989) (where plaintiffs' claims against former officers of insolvent corporation overlapped with claims asserted by its trustee in bankruptcy, plaintiffs' damages were "unrecoverable," "speculative," and "unprovable"; plaintiffs' injury was wholly dependent upon the trustee's lack of recovery); *Barnett v. Stern*, 909 F.2d 973, 977 n.4 (7th Cir. 1990) (RICO claims are premature where it was uncertain whether plaintiffs would satisfy their claims from the bankruptcy estate); *L'Europeene de Banque v. La Republica de Venezuela*, 700 F. Supp. 114, 118-19 (S.D.N.Y. 1988). All BCCI depositors lack the requisite injury to proceed with RICO claims at this time.[37]

Plaintiffs distinguish *Bankers Trust* and argue that it should not apply because the Second Circuit applied a "discovery of injury" accrual to a RICO cause of action and stated that "refusal to award damages as too speculative is equivalent to holding that no cause of action has

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[37] Certain putative class plaintiffs' claims may never suffer injury giving rise to a RICO claim. In the United States, BCCI assets held by the Superintendents of Banking of New York and California are being distributed to depositors. Since available assets in both states far exceed political claims and only the excess will be turned over to the foreign BCCI liquidators, no BCCI depositors who had money in United States offices on July 5, 1991 will lose their deposits. Similarly, depositors in Pakistan and Oman may not lose any of their deposits because those governments have announced their intention to insure depositor losses.

yet accrued." *Id.* at 1106 (citing *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 339, 91 S. Ct. 795, 806, 28 L.Ed.2d 77 (1971)). In contrast, plaintiffs contend that a RICO claim accrues in the Ninth Circuit when the plaintiff has "actual or constructive knowledge of the fraud." *Beneficial Standard Life Ins. Co. v. Madariaga*, 851 F.2d 271, 275 (9th Cir. 1988). However, a more precise statement of the rule is that the limitations period in the Ninth Circuit begins to run " 'when the plaintiff knows or has reason to know of the *injury* which is the basis for his action.' " *Beneficial Standard Life*, 851 F.2d at 274 (citing and approving the accrual rule stated in *Compton v. Ide*, 732 F.2d 1429, 1433 (9th Cir. 1984)) (emphasis added); *State Farm Mutual Auto Ins. Co. v. Ammann*, 828 F.2d 4, 5 (9th Cir. 1987) (same). Accordingly, plaintiffs' distinction does not avoid the Court's application of *Bankers Trust* to their RICO claims.[38]

3. Extra-Territorial Jurisdiction

While Congress certainly has the authority to enact laws that reach conduct occurring outside the territorial boundaries of the United States, whether Congress has in fact exercised that authority is a question of statutory

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[38] Additionally, plaintiffs attempt to distinguish *John L. Motley Assocs., Banker's Trust, Barnett,* and *L'Europeene de Banque* on the grounds that, unlike the case before the Court, (1) full recovery was certain in the bankruptcy proceedings; (2) the trustees were appointed pursuant to an orderly scheme, *e.g.*, the U.S. Bankruptcy laws; and (3) rulings that plaintiffs stated no RICO injury did not end those plaintiffs' suits. These contentions are either factually incorrect or unpersuasive.

construction. *EEOC v. Arabian Am. Oil Co.*, 111 S. Ct. 1227, 1230, 113 L.Ed.2d 274 (1991); *Republic of Phillipines v. Marcos*, 818 F.2d 1473, 1478 (9th Cir. 1987), *on reh'g*, 862 F.2d 1355 (9th Cir. 1988) (thefts occurring in the Phillipines "quite probably" not reached by RICO and finding jurisdiction solely on the basis of acts occurring in the United States). However, there is a strong presumption against extra-territorial application of any federal statute and unless a contrary intent appears, the statute is meant to apply only within the territorial jurisdiction of the United States. *See EEOC v. Arabian Am. Oil Co.*, 111 S. Ct. 1227, 1230, 113 L.Ed.2d 274 (1991) (Title VII does not apply extra-territorially); *Independent Union of Flight Attendants v. Pan Am. World Airways, Inc.*, 923 F.2d 678, 680-82 (9th Cir. 1991), *op. withdrawn and appeal dismissed on other grounds*, 92 Daily Journal D.A.R. 4909 (9th Cir. Apr. 10, 1992) (National Railway Labor Act does not apply extra-territorially).[39]

To determine whether foreign conduct vests the Court with subject matter jurisdiction requires the Court to undertake three separate inquiries: (1) the effect or intended effect on the foreign commerce of the United States; (2) the type and magnitude of the alleged illegal

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[39] When a court encounters activity that is predominately foreign, it must question whether "Congress would have wished the precious resources of United States courts and law enforcement agencies to be devoted to them rather than leave the problem to foreign countries. *Bersch v. Drexel Firestone, Inc.*, 519 F.2d 974, 985 (2d Cir.), *cert. denied*, 423 U.S. 1018, 96 S. Ct. 453, 46 L.Ed.2d 389 (1975).

behavior; and (3) the appropriateness of exercising extra-territorial jurisdiction in light of considerations of international comity and fairness. *Timberlane Lumber Co. v. Bank of Am., N.T. & S.A.*, 749 F.2d 1378, 1381 (9th Cir. 1984), *cert. denied*, 472 U.S. 1032, 105 S. Ct. 3514, 87 L.Ed.2d 643 (1985) (citing *Timberlane Lumber Co. v. Bank of Am., N.T. & S.A.*, 549 F.2d 597, 613 (9th Cir. 1976) (*Timberland I*)).[40]

Assuming *arguendo* that the first two *Timberlane I* elements are met here, the Court must then determine "whether the interests of, and links to, the United States – including the magnitude of the effect on American foreign commerce – are sufficiently strong, vis-a-vis those of other nations, to justify an assertion of extraterritorial

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[40] A motion to dismiss for lack of subject matter jurisdiction is generally treated as a Rule 12(b)(1) "speaking motion" and summary judgment treatment under Rule 56 of the Federal Rules of Civil Procedure is not required. *Trentacosta v. Frontier Pac. Aircraft Indus., Inc.*, 813 F.2d 1553, 1558 (9th Cir. 987); *see McCarthy v. United States*, 850 F.2d 558 (9th Cir. 1987); *cert. denied*, 489 U.S. 1052, 109 S. Ct. 1312, 103 L.Ed.2d 581 (1988) (a court is not restricted to the face of the pleadings when considering a Rule 12(b)(1) motion but may review any evidence that might resolve factual disputes concerning the existence of jurisdiction).

If the Court were to resolve the question of jurisdiction on either of the first two parts of the *Timberlane I* test, however, the issues might be sufficiently intertwined with the merits of the treatment. *Timberlane Lumber Co. v. Bank of Am. N.T. & S.A.*, 749 F.2d 1378, 1381 (9th Cir. 1984). On the other hand, refusal to exercise jurisdiction under the third part of the *Timberlane I* test need not directly implicate the merits of the case and Rule 12(b)(1) dismissal would be proper when the case is dismissed on that basis. *Id.*

authority." *Timberlane I*, 549 F.2d at 613. This determination requires the Court to consider seven factors:

> (1) the degree of conflict with foreign law or policy, (2) the nationality or allegiance of the parties and the locations or principal places of businesses or corporations, (3) the extent to which enforcement by either state can be expected to achieve compliance, (4) the relative significance of effects on the United States as compared with those elsewhere, (5) the extent to which there is explicit purpose to harm or affect American commerce, (6) the foreseeability of such effect, and (7) the relative importance to the violations charged of conduct within the United States as compared with conduct abroad.

Id. at 614; *see Vespa of Am. Corp. v. Bajaj Auto Ltd.*, 550 F. Supp. 224 (N.D. Cal. 1982). Since only racketeering acts that are predominantly foreign caused plaintiffs' losses, and United States depositors will never suffer any injury because no United States depositors will be lost, the exercise of subject matter jurisdiction over this case would be improper.

a. **Degree of conflict with foreign law or policy.** This element of *Timberlane I*'s test is usually applied in antitrust cases, where foreign policies and market systems often run counter to those policies expressed in United States antitrust law. RICO, on the other hand, prohibits acts that are – for the most part – prohibited everywhere.[41] However, the prosecution of plaintiffs'

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[41] Plaintiffs' conclusion, however, that *Timberlane* is therefore inapplicable to this case does not follow. Many key provisions of RICO were patterned after the antitrust laws and are

RICO claims here has the potential to interfere with the orderly liquidation of BCCI, presently proceeding in the United Kingdom, Luxembourg, and the Cayman Islands (where BCCI's main operations existed), as well as in many of the sixty-nine countries where BCCI accepted deposits. This action certainly conflicts with those foreign proceedings.

b. **Nationality or allegiance of the parties and the locations or principal places of businesses or corporations.** Few of the one million plaintiffs deposited money in United States offices of BCCI. The defendants whose conduct principally contributed to plaintiffs' losses are all foreign. Additionally, the locations or principal places of the relevant businesses or corporations are all foreign. By including the infiltration of the United States banking system by BCCI in their RICO claim, plaintiffs confuse the true nature of their looting claim and the appearance that an abundance of relevant activity and parties exist in the United States is misleading. Plaintiffs' argument that the American banks are like subsidiaries of BCCI that weigh in favor of exercising jurisdiction here is wrong.

c. **Degree to which enforcement by either state can be expected to achieve compliance.** It would be very difficult, if not impossible, for plaintiffs to enforce any judgment that might be entered by the Court here in many of the sixty-eight other countries where BCCI

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construed by analyzing antitrust jurisprudence. Thus, the *Timberlane I* test applies to plaintiffs' RICO claims.

accepted deposits.[42] Furthermore, the possibility that the Court's decisions may not have preclusive effect outside United States boundaries, particularly after what promises to be lengthy and expensive litigation, makes the exercise of extraterritorial jurisdiction here improper.

d. **Relative significance of effects on the United States as compared with those elsewhere.** Plaintiffs contend that the criminal conduct charged against BCCI in the United States and the guilty pleas entered by BCCI here not only show the influence BCCI had in the United States, but that the guilty pleas would be admissible in plaintiffs' RICO suit and would have preclusive effect. Plaintiffs' argument is faulty because the conduct alleged in criminal cases in the United States did not cause plaintiffs' loss, and the guilty pleas were by BCCI, who is not a defendant here.

BCCI is a foreign bank with its core operations in Europe, the Middle East, and Africa. At the time it closed in July 1991, BCCI only had two agencies open in the United States. On June 30, 1991, with world-wide deposits reported at $15.969 billion, only 1/2 of one percent of those depositions were in BCCI's United States agencies. Not only are 99 1/2 percent of BCCI deposits

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[42] The Court has considered expert opinions on the enforceability of a RICO judgment in the six countries where BCCI chiefly operated – the United Kingdom, Hong Kong, Luxembourg, the Grand Cayman Islands, Bahrain, and the United Arab Emirates – as well as thirty-eight additional countries.

foreign, none of the deposits made in United States agency offices will be lost.[43]

e. **Extent to which there is explicit purpose to harm or affect American commerce and the foreseeability of such effect.** Plaintiffs contend that BCCI solicited and accepted depositors' money here in the United States through its agency offices, despite the fact that it was illegal for BCCI to do so. *See* Complaint, ¶¶ 33, 289(f). However, no justiciable [sic] injury may ever arise from those deposits allegedly made in the United States. Though plaintiffs contend that BCCI's involvement in the United States banking system affects United States commerce, this conduct did not injure plaintiffs. Similarly, the fraud allegedly perpetrated by the accounting firms and H&K in the United States, *see* Complaint, ¶¶ 28, 36, does not reflect an intended effect on United State [sic] commerce because all of plaintiffs' losses stem from their deposit in BCCI's foreign operations.

f. **Relative importance to the violations charged of conduct within the United States as compared with conduct abroad.** Since none of the predicate acts that caused plaintiffs' injuries occurred here, the United States has very little interest in the foreign conduct of BCCI,

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[43] Even assuming that United States deposits will be returned to the depositors without any interest for the time the funds were unavailable, that interest constitutes a small percentage of the 1/2 of one percent of the total BCCI deposits made in the United States. More importantly, that lost interest is only a minuscule portion of the deposits lost outside the United States.

however egregious it may be. Construing RICO to provide a remedy to this foreign fraud would give RICO a "nearly boundless extraterritorial scope," providing "a vehicle for adventurous civil and criminal litigators with an itch to see the world." *Peters v. Welsh Dev. Agency*, 1991 U.S. Dist. LEXIS 12174 (N.D. Ill. Aug. 29, 1991).

E. FORUM NON CONVENIENS

A party moving to dismiss on grounds of forum non conveniens must show two things: (1) the existence of an adequate alternative forum, and (2) that the balance of private and public interest factors favors dismissal. *Lockman Foundation v. Evangelical Alliance Mission*, 930 F.2d 764, 767 (9th Cir. 1991). The requirement of an adequate alternative forum is ordinarily satisfied when a defendant is "amenable to process" in the other jurisdiction. *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 254 n.22, 102 S. Ct. 252, 265 n.22, 70 L.Ed.2d 419, 435 n.22 (1981) (citing *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 506-07, 67 S. Ct. 839, 842, 91 L.Ed. 1055, 1061 (1947)).

Here, not all defendants are amenable to process in the United Kingdom. One of BCCI's principal accounting firms (PW/UK), BCCI's public relations firm (H&K), and defendants Naqvi and Iqbal are all subject to U.K. jurisdiction. Defendants BofA, PW/US, and E&Y have stipulated to accede to U.K. jurisdiction. On the other hand, the Clifford Defendants, the InterRedec Defendants, the First American Defendants, and defendant Dobrich contest United Kingdom jurisdiction and are probably not subject to compelled process in the U.K.

The defendants invite the Court to distinguish between "key" defendants – subject to process in the U.K. – and those United States defendants whose conduct did not proximately cause plaintiffs' losses. However, plaintiffs' allegations of conspiracy and aiding and abetting foreclose such a distinction at this time. Thus, assuming *arguendo* that the parties are otherwise properly before the Court, defendants' motion to dismiss on forum non conveniens grounds is denied.

F. MISCELLANEOUS MATTERS

Plaintiffs initially filed their complaint in this action on August 21, 1991; plaintiffs filed a first amended complaint on September 11, 1991. Leave of Court would therefore be required for plaintiffs to add parties at this stage of the litigation. *See* Fed. R. Civ. P. 15(a); 21. Having dismissed the Complaint without leave to amend, plaintiffs' motion to add parties is moot.[44]

On a Rule 12(b)(6) motion, it would be premature for the Court to preclusively conclude that no global or worldwide entity theory is available to plaintiffs. *See Department of Econ. Dev. v. Arthur Andersen & Co.*, 683 F. Supp. 1463, 1468 n.1 (S.D.N.Y. 1988) (whether affiliated accounting firms are a single global partnership is a question of fact). The Court's ruling on this issue in the Order was based on the facts as alleged at that time and

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[44] Consequently, the motion to dismiss brought by Paul C. Warnke, John F. Kovin, David I. Granger, Harold D. Murry, Jr., John G. Calendar, J. Griffin Lesher, Bryan Jay Yolles, Robert P. Reznick, Philip H. Hecht, and James C. Duff is not before the Court.

does not constitute the law of the case. Accordingly, PW/ World Firm's motion to strike all references in the Complaint to a "worldwide partnership" with the name "Price Waterhouse," based on the law of the case doctrine, is denied.

As a result of the Court's resolution of the subject matter jurisdiction question, it is unnecessary for the Court to reach the issues of sovereign immunity or personal jurisdiction raised by ADIA's motion to dismiss.

III. CONCLUSION

Though plaintiffs' allegations meet the specificity requirements of federal pleading, plaintiffs' RICO claims must be dismissed without leave to amend because plaintiffs clearly allege that no ascertainable structure exists in their RICO enterprises apart from the alleged pattern of racketeering. Additionally, plaintiffs' section 1962(a) RICO claim must be dismissed without leave to amend because no injury from the use or investment of racketeering income exists where only reinvestment is alleged.

Furthermore, plaintiffs are unable to proceed with their claims because they lack standing. Not only are plaintiffs' claims derivative of BCCI and plaintiffs cannot allege any special duty or distinct injury that might avoid this bar to their suit, but plaintiffs fail to allege an injury presently giving rise to their RICO claims because all or part of their claims may be satisfied through liquidation proceedings.

Finally, in light of the foreign conduct that proximately caused plaintiffs' losses and the negligible injuries that might possibly occur to plaintiffs as a result of BCCI's activities in the United States, the Court lacks subject matter jurisdiction under principles of international comity and fairness.

Based on the foregoing, IT IS HEREBY ORDERED that plaintiffs' Complaint is dismissed without leave to amend. The Clerk is ordered to serve a copy of this memorandum opinion on the parties forthwith.

IT IS SO ORDERED.

DATED: 5/20, 1992

/s/
CONSUELO B. MARSHALL
UNITED STATES
DISTRICT JUDGE

Supreme Court, U.S.
FILED

(2)

No. 95-704 NOV 1 - 1995

OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1995

AKHTAR HAMID, SHRICHAND CHAWLA, SOHA, INC., IDRISS DEVCO, INC., S&L GENTRADE, INC., LEO D. CURRAN, NIAM MUSLEH, WILLY HERMANS, RED CIRCLE INVESTMENTS, LTD., SADIK MAHMOUD HASHIM, NUHA HUSSAIN MUBAREK, JALEH KHORASSANCHY, PHILIP MERZ and AMIT PANDYA, On Behalf Of Themselves and All Others Similarly Situated,

Petitioners,

vs.

PRICE WATERHOUSE; PRICE WATERHOUSE/U.K.; PRICE WATERHOUSE WORLD FIRM, LTD.; PRICE WATERHOUSE/U.S.; ERNST & YOUNG; ABU DHABI, EMIRATE OF ABU DHABI; ABU DHABI INVESTMENT AUTHORITY; BANK OF AMERICA CORPORATION; BANKAMERICA CORP.; BANK OF AMERICA NT&SA; HILL & KNOWLTON; GRP INVESTMENTS; INTERREDEC, INC.; INTERREDEC SOUTHERN CO.; FIRST AMERICAN CORP.; FIRST AMERICAN BANKSHARES; PAUL ADAMS; JACK BEDDOW; A. VINCENT SCOFFONE; T. BERTRAM LANCE; INDEPENDENCE BANK; MANUEL NORIEGA; FULVIO DOBRICH; ROBERT ALTMAN, CLARK CLIFFORD and CLIFFORD & WARNKE,

Respondents.

Petition For Writ Of Certiorari
To The Ninth Circuit Court Of Appeals

APPENDIX TO PETITION FOR WRIT OF CERTIORARI VOLUME II (PAGES A-63 TO A-338)

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

AKHTAR HAMID, SHRICHAND CHAWLA, SOHA, INC., IDRISS DEVCO, INC., S & L GENTRADE, INC., LEO D. CURRAN, NIAM MUSLEH, WILLY HERMANS, RED CIRCLE INVESTMENTS, LTD., SADIK MAHMOUD HASHIM, NUHA HUSSAIN MUBAREK, JALEH KHORASSANCHY, PHILIP MERZ, and AMIT PANDYA, On Behalf of Themselves and All Others Similarly Situated,

Plaintiffs,

vs.

PRICE WATERHOUSE, PRICE WATERHOUSE/US, PRICE WATERHOUSE/UK, PRICE WATERHOUSE/LUXEMBOURG, ANDREW NOLAN, MARTIN F. BAUMANN, CHRISTOPHER COWAN, ROBERT R. BENCH, ERNST & YOUNG (Successor to ERNST & WHINNEY), ERNST & YOUNG/US, ERNST & YOUNG/ UK, ERNST & YOUNG/ LUXEMBOURG, ABU DHABI, ABU DHABI FINANCE COMPANY a/k/a ABU DHABI INVESTMENT AUTHORITY, SHEIKH ZAYED AL-NAHAYAN, GHAITH PHARAON, (CONCORDE FINANCE & INVESTMENTS, PHARAON

Civil No.91-4483-CBM(Ex)

CLASS ACTION

THIRD AMENDED COMPLAINT FOR VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT, INTERNATIONAL FINANCIAL AND BANKING CORRUPTION AND OUTLAWING

Plaintiffs Demand A *Trial By Jury*

HOLDINGS, LTD., GRP)
INVESTMENTS N.V., GRP. INC.,)
NBG FINANCIAL CORPORATION,)
INTERREDEC INC., INTERREDEC)
SOUTHERN CO. INC.,)
INTERREDEC (GEORGIA))
LIMITED, INTERREDEC)
(GEORGIA) N.V., WESLEY CO.,)
INC., RIVER OAKS, INC., RIVER)
OAKS INVESTMENTS, INC.,)
STERLING BLUFF, INC., SHEIKH)
KAMAL ADHAM, ABDUL R.)
KHALIL, SAYED JAWHARY,)
FAISAL SAUD AL-FULAIJ, AGHA)
HASAN ABEDI, SWALEH NAQVI,)
ZAFAR IQBAL, AMJAD B. AWAN,)
GHANIM FARIS AL-MAZRUI,)
DILDAR RIZZI, SYED ZIAUDDIN)
ALI AKBAR, SANI AHMAD,)
CAPCOM FINANCIAL SERVICES,)
INC. (LTD.), MANUEL NORIEGA,)
YVES C. LAMARCHE, J.D. VAN)
OENEN, P.C. TWITCHIN, ALFRED)
HARTMANN, SAAD. M. SHAFI,)
FIRST AMERICAN CORP., FIRST)
AMERICAN BANKSHARES, INC.,)
CLARK CLIFFORD, ROBERT)
ALTMAN, A. VINCENT)
SCOFFONE, JACK BEDDOW,)
PAUL G. ADAMS III, CLIFFORD)
& WARNKE, PAUL C. WARNKE,)
JOHN F. KOVIN, DAVID I.)
GRANGER, HAROLD D. MURRY,)
JR., JOHN G. CALENDER, J.)
GRIFFIN LESHER, BRYAN JAY)
YOLLES, ROBERT P. REZNICK,)

PHILIP H. HECHT, JAMES C. DUFF, T. BERTRAM LANCE, DAVID L. PAUL, INDEPENDENCE BANK, FULVIO DOBRICH, KEMAL SHOAIB, MICHAEL GOLAND, BANKAMERICA CORP., BANK OF AMERICA NT&SA, HILL AND KNOWLTON, INC., ROBERT MAGNESS and LAWRENCE ROMRELL,

Defendants.

Plaintiffs Akhtar Hamid, Shrichand Chawla, Soha, Inc., Idriss Devco, Inc., S & L Gentrade, Inc., Leo D. Curran, Niam Musleh, Willy Hermans, Red Circle Investment, Ltd., Sadik Mahmoud Hashim, Nuha Hussain Mubarek, Jaleh Khorassanchy, Philip Merz and Amit Pandya, by their counsel, allege upon information and belief based, *inter alia*, upon the investigation of their counsel, except for the allegations relating to the named plaintiffs and their counsel, which are alleged upon knowledge, as follows:

I. SUMMARY OF COMPLAINT

1. (a) This is a class action brought pursuant to Fed. R. Civ. P. 23 on behalf of the depositors in the constellation of banks known as Bank of Credit & Commerce International ("BCCI"), as defined in ¶19 hereof, who lost billions in July, 1991, when BCCI was seized and shut down by banking authorities in the United States and several other countries, victims of the operation of the

largest international criminal enterprise in history. This action seeks to remedy violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-1968, and the laws of nations and treaties of the United States. In connection with a pattern of racketeering activity, piracy and international outlawing described herein, BCCI and its wholly-owned or controlled entities in several countries, including the United States (the "BCCI Banks" or the "BCCI Group"), conspiring with and aided and abetted by the other defendants, operated a vast criminal enterprise – an international banking operation with 400 branches in over 70 countries, the fifth largest private bank in the world with over 1.0 million depositors, in gross violation of the laws of nations, including those of the United States, specifically RICO. This action is not brought on behalf of or for the benefit of BCCI seeking to recover any damages on its behalf, assert any causes of action belonging to it or to remedy any losses suffered by it; rather, it is brought on behalf of BCCI depositors directly for the damages they suffered due to the operation of BCCI as a criminal enterprise and defendants' misconduct which was aimed at them as depositors, thus it asserts causes of action belonging to them and which can only be asserted by them. The damages and injuries suffered by plaintiffs and the members of the class due to defendants' misconduct which was aimed at them as depositors, are separate and distinct from any damages or injuries suffered by BCCI and were not suffered as incidental to any injury suffered by BCCI but, rather, resulted from breaches of duty directly owed to plaintiffs and the members of the class and constitute

direct and special injury suffered by them. Each defendant owed a special duty to the plaintiffs and the members of the class separate and apart from whatever duties they may have owed BCCI, the violation of which directly caused members of the plaintiff class injury (*i.e.*, loss of deposits) in violation of 18 U.S.C. § 1962. Each defendant knew that BCCI accepted deposits from members of the public and knew that if BCCI operated in violation of law and/or insiders at BCCI misused or diverted deposits, BCCI could be seized or shut down and depositors would be harmed. Each defendant knew that BCCI was, in fact, operating in violation of law and that BCCI insiders were misusing and/or diverting deposits; and that defendants' active engagement in the conspiracy and/or aiding and abetting BCCI's illegal conduct provided important assistance to the operation of its ongoing criminal enterprise which would directly injure its depositors. Each defendant also knew that BCCI was operating illegally in the United States, that it was structured in a fashion to avoid any overall regulation by a single central bank, and that BCCI's depositors were protected by little, if any, government deposit insurance; thus, any failure or seizure of the Bank would result in significant harm to virtually all of the depositors. Each defendant also owed BCCI's depositors a special duty because, due to his/its relationship to BCCI and, as a result, he/it was in a position to protect the depositors and prevent the losses they have suffered. In addition, each defendant owed a special duty to BCCI's depositors not to conspire with or aid and abet the BCCI criminal enterprise to harm BCCI's depositors.

(b) BCCI, which was formed in 1972, and the BCCI Banks financed international terrorists, drug

dealers and arms merchants, as well as the illegal export to Iraq, Iran and Pakistan of nuclear weapons material, laundered monies from illegal narcotics and other transactions, bribed government officials and other individuals, made huge unauthorized, illegal or improper transfers of depositors' funds in the BCCI Banks to insiders, their friends and business associates, assisted notorious dictators in looting their nations' treasuries, secretly and illegally infiltrated the United States banking system, misrepresented their financial condition and methods of operation in audited and other financial statements to overstate their assets and profits and understate and/or conceal their losses and the criminal nature of their operations, while obtaining billions in deposits from customers, including many residents of the United States and United States citizens in this country and abroad. BCCI was a vast, stateless, multi-national criminal enterprise that operated its own intelligence agency and had an enforcement section known as the "Black Network" and a "Special Duties" Department whose job it was to continually create false documentation to conceal the illegal acts BCCI was pursuing.

(c) The BCCI criminal enterprise and conspiracy complained of herein had a direct and substantial impact on the interstate and foreign commerce of the United States and a substantial portion of the wrongdoing involving the BCCI Banks occurred in the United States, where BCCI (i) solicited and obtained millions in deposits from U.S. citizens and non-U.S. citizens through offices in several cities, including, *inter alia*, Los Angeles, San Francisco and Beverly Hills, California; Miami, Boca

Raton and Tampa, Florida; Houston, Texas; Chicago, Illinois; New York City, New York; and Washington, D.C., not counting the United States-located banks BCCI illegally controlled; (ii) made loans exceeding $250 million in the United States, had assets here exceeding $810 million and obtained revenues here, in 1989 alone, of over $81 million and deposited over $60 million with banking regulators in California, New York and Florida; (iii) utilized at least Bank of America as a "correspondent bank" with respect to transactions exceeding in the aggregate $175 million at the time BCCI was seized; and (iv) illegally infiltrated the United States banking system by secretly obtaining control of First American Bankshares of Washington, D.C. (a large bank holding company, which operated banks with over 400 branches in Maryland, Virginia, Tennessee, New York, Georgia and Florida), the National Bank of Georgia in Georgia (the largest bank in Georgia), CenTrust Savings Bank in Florida (which controlled some 20 branches), the Independence Bank in Encino, California (which had 11 branches), and the Viking Savings & Loan in Santa Monica, California, and then used their secret and illegal control of those banks to further the interests of BCCI and its insiders in the United States and elsewhere by, inter alia, wasting and/or diverting their assets and resources.

2. In July, 1991, at the insistence of U.S. banking regulators, government officials located in, *inter alia*, the United States, Great Britain, Luxembourg and the Cayman Islands, seized BCCI and certain of its subsidiaries after discovering that the BCCI Banks had been operating a criminal enterprise for many years, illegally infiltrating

the U.S. banking system, falsifying their financial condition, engaging in undisclosed insider "lending" transactions, funneling bank funds to insiders and their business associates, financing illegal drug and arms transactions and laundering drug money and, due to these activities and a complete lack of proper banking practices and the internal controls necessary to safeguard the assets of banks (including depositors' funds), had made billions of dollars in uncollectible "loans." Shortly thereafter, the BCCI Banks and certain of their top officers and directors were indicted on 12 criminal counts, including larceny and money laundering, in New York for their conduct in operating the BCCI criminal enterprise in the United States. (A copy of the indictment is attached hereto as Exhibit 8 and is expressly incorporated herein by reference.)[1] In July, 1991, the Federal Reserve Board ("FRB") announced it would bar four defendants – Ghaith Pharaon, Agha Hasan Abedi, Kemal Shoaib and Swaleh Naqvi (who had been closely involved with BCCI for years) – from ever again engaging in any banking activities in the United States due to, *inter alia*, their illegal conduct in arranging for BCCI to secretly obtain illegal control of the Independence Bank in Encino, California. In late July, 1991, the FRB announced it would fine BCCI $200 million for lying to United States officials to conceal BCCI's scheme to illegally infiltrate the American banking system by secretly obtaining control of First American Bankshares ("First American"), the largest bank in our nation's capital, National Bank of Georgia ("NBG"), the

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[1] Appendices containing Exhibits 1-42 to this Third Amended Complaint are concurrently filed herewith.

largest bank in Georgia, CenTrust Savings Bank ("CenTrust"), which had some 20 branches in Florida and Independence Bank of Encino, California ("Independence Bank"). *See* Exhibits 20 and 21. In early September, 1991, BCCI was identified as a "criminal enterprise" by the United States when it indicted BCCI's treasurers during 1980-1991 (defendants Akbar and Rizzi) for allowing BCCI's United States operations to illegally launder over $14 million in the proceeds from the illegal smuggling of narcotics into the United States. *See* Exhibit 7. On November 1, 1991, the United States indicted BCCI and several of its top officers for defrauding the government and obtaining money by fraud arising out of BCCI's illegal acquisition of control of First American, CenTrust and Independence Bank. *See* Exhibit 10.

3. (a) BCCI was founded in 1972 by Agha Hasan Abedi, Swaleh Naqvi, Sheikh Zayed bin Sultan al-Nahayan (the ruler of Abu Dhabi), operating through Abu Dhabi Finance Department a/k/a Abu Dhabi Investment Authority ("Abu Dhabi Investment/Finance"), and BankAmerica Corporation. BCCI was created via illegal conduct as Abedi generated some $2 million of the initial capital utilized tc start BCCI by making loans in that amount to associates of his from another bank he controlled, and then writing those loans off as uncollectible. BCCI quickly expanded to include operations in some 70 countries around the world. One BCCI-controlled enterprise, International Credit and Investment Company, a Cayman-based bank, was used to conceal BCCI Group liabilities, facilitate phony transactions and transfers and create false assets for the BCCI Group. Another BCCI-

controlled enterprise, International Credit and Investment Company Holdings, was used to conceal stolen money. Credit and Commerce American Holdings and Credit and Commerce American Investment and certain nominees (strawmen) were used to illegally infiltrate the United States banking industry.

(b) Defendants advanced their fraud by establishing separate entities in a number of different countries, such as the Cayman Islands and Luxembourg, which have laws against the transfer of banking information and lax banking regulations and supervision and by refusing for many years to permit a single outside auditor to audit all of BCCI's acknowledged subsidiaries or to review many of their key records. This was done in order to avoid comprehensive regulation of the BCCI Group on a consolidated basis by a single governmental supervisor or any effective overall independent audit of its operations. This conduct, as well as BCCI's concealment of its actual ownership and/or control of several banks in the United States, also enabled BCCI to evade governmental supervision by regulatory authorities and to make transfers of assets within the BCCI Group so as to benefit and enrich BCCI insiders, their friends and business associates and to conceal its true financial position and nature of its illegal operations. By 1981, with the assistance of defendants Clark M. Clifford, Robert Altman, and their law firm, Clifford & Warnke, Bert Lance, as well as Bank of America, BCCI had also infiltrated the United States banking system and would ultimately secretly and illegally control five large banks or savings and loans with hundreds of branches in several states, including California, giving them the ability to use the assets and influence

of these banks to funnel monies to associates of the BCCI Banks and their insiders, to make huge and often illegal political contributions and sweetheart loans to influential American political figures and other associates of BCCI's insiders and to increase BCCI's influence in the United States. The chart set forth on the following page shows how BCCI was organized and controlled and secretly and illegally infiltrated the United States banking system.

4. Certain defendants brought in the ruling families of Middle Eastern states and other purportedly wealthy businessmen as "nominal shareholders" of the BCCI Group in order to create a false impression that individuals of huge wealth were involved with the BCCI Banks, concealing that there were secret agreements that protected those people from any losses. These nominees included Ghaith Pharaon, Sheikh Kamal Adham, Sayed Jawhary and Faisal Saud al-Fulaij, who all conspired with and assisted BCCI by allowing it to trade on their reputations in return for over $45 million in secret payments from BCCI, while defendants filed false statements with the United States and other banking authorities about who owned BCCI. These four nominees allowed BCCI to represent that they had been loaned money by BCCI, when, in fact, there was no obligation to repay the advances. This scheme enabled BCCI to create false assets and gave the impression that the wealthy figures were economically involved with BCCI. The false assertions of ownership also misled people into believing that the wealthy people were shareholders in BCCI, had their capital at risk and that they would stand behind it financially if it got into trouble.

5. The defendants also paid bribes and made kickbacks to other banks and financial institutions and, by virtue of those practices, defendants avoided scrutiny by other banking and financial institutions of the capital structure and financial viability of the BCCI Group. In 1986 and 1987, BCCI paid $3 million in bribes to the two senior officers of the Central Reserve Bank of Peru through a special Swiss bank account located in Panama in order to obtain deposits and a banking relationship with Peru. Later, BCCI paid the former manager of BCCI investment activities in London (Syed Ziauddin Ali Akbar) a $30+ million bribe to keep him from disclosing the details of BCCI's criminal conduct to authorities. BCCI also made payoffs of over $3 million to Zulyikar Ali Bhutto, who was then Premier of Pakistan, paid large bribes to the governor of the state of Pakistan, where ringleader Abedi now lives, so that he will prevent Abedi's extradition to the United States and Bank of America hired Ijaz, the son of General Zia of Pakistan. First American Bank and its subsidiaries and the other banks secretly and illegally controlled by BCCI also made many large and very generous loans to political figures in the United States in order to secure their cooperation and help, while CenTrust Savings Bank, its Political Action Committee ("PAC"), and its top officers and others controlled by them made huge (over $300,000) and often illegal political contributions, while Viking Bank made huge and illegal political contributions in the United States to increase the political influence of the BCCI Banks.

6. The BCCI Banks carried out their pattern of racketeering activity by filing false statements (including

financial statements) with United States and other banking authorities and correspondent banks with which it was doing business. These statements contained false and fraudulent representations materially overstating and falsifying the capital and net worth of the BCCI Group members, as well as the ability of these institutions to repay their depositors. From 1973 through 1987, BCCI, with the help of its outside accountants, consistently falsely reported profits. The BCCI Banks operated virtually without any internal accounting, financial, or lending controls and, as a result, billions in bank deposits were simply siphoned off to BCCI insiders and their associates, often in the form of bogus loans which were never intended to be paid or false or unnecessary commodity or financial instrument trading activities through, *inter alia,* Capcom Financial Services, Inc. (Ltd.) located here in the United States. Fake deposits and loans were constantly recorded to inflate the apparent financial condition of the BCCI Banks and funds were often double-counted and/or booked in deceptive ways involving over 7,000 false/bogus accounts. In fact, by the late 1980's, BCCI had a full-time department called the "Special Duties Department," which did nothing more than falsify records of deposits, loans, loan servicing, monetary transfers, trading activities and the like to conceal the BCCI Banks' true financial condition and criminal activities.

7. Similarly, CenTrust also operated with grossly inadequate lending and accounting controls and in defiance of federal regulators while millions of depositors' funds were looted and/or wasted to pay for lavish perks and personal lifestyles of CenTrust insiders and via uncollectible loans to further the overall objectives of the

BCCI Group prior to CenTrust's seizure by the United States banking authorities at a cost to the American taxpayers of over $2 billion. Independence Bank also operated with inadequate lending and account controls, misusing its assets to further the overall objectives of the BCCI Banks, while Viking Savings became insolvent due to the waste and misuse of its assets to make illegal political contributions to United States politicians.

8. (a) The wrongdoing of the BCCI Banks could not have been accomplished without the active and knowing assistance of certain banks, professionals and other individuals and others who conspired with and/or aided and abetted the BCCI Banks and its top officials to perpetrate the pattern of racketeering activity complained of herein. BankAmerica was a founder of BCCI in 1972 and ultimately controlled 30% of BCCI's stock, had representation on its Board of Directors for many years through its agent and officer, Alvin C. Rice, allowed or encouraged one of its employees (Roy P.M. Carlson), who had for years overseen its investment in BCCI, to become CEO of NBG when BCCI illegally obtained control of that bank and over the years provided top executive talent to BCCI from its own ranks. In 1976, BankAmerica caused its employee, Robert Frick, to become chief administrative officer of BCCI, a job he performed in part from an office at BankAmerica. Yves Lamarche, J.D. van Oenen and P.C. Twitchin all left BankAmerica in the 1970's to join BCCI as top executives and become members of BCCI's Board of Directors. While in these positions, these Bank of America executives acted to represent Bank of America and protect its interests and reported to BCCI frequently. In the late 1970's, Bank of America imposed rigorous

controls over BCCI's operations, which controls were implemented and overseen by its representatives inside BCCI. By 1989-1990, Bank of America had provided three of the seven directors of BCCI Holdings, S.A., the top parent holding company in the BCCI Group, in the person of Lamarche, van Oenen and Twitchin, and, even after it purportedly "sold" its interest in BCCI in 1978-80 in a non-arm's length transaction to an affiliate of BCCI, which "sale" it financed and nonetheless improperly recognized a profit of some $27 million on its investment of less than $5 million in just six years, knowing that BCCI was going to continue to expand its illegal operations in the United States, it continued to assist BCCI with currency transfers, deposits and other services that facilitated its (and certain of the other defendants') illegal conduct, including guaranteeing BCCI letters of credit for large fees, helping Pharaon conceal that BCCI, and not Pharaon, actually owned and/or controlled Independence Bank, in addition to helping persons, including members of the class, in the United States deposit funds in BCCI, thus circumventing rules that prohibited BCCI from accepting deposits from U.S. citizens here.

(b) Bert Lance assisted BCCI to illegally obtain control of NBG by selling his stock in that bank to BCCI (via Ghaith Pharaon) at a hugh premium and, in return for lucrative "consulting" payments with BCCI and other secret financial assistance from them. Lance then assisted BCCI in obtaining illegal control of First American Bank by helping to organize an illegal "group" of purportedly independent investors who ultimately purchased some 20% of the stock of First American Bankshares.

(c) Ernst & Young (then Ernst & Whinney) and Price Waterhouse, two worldwide accounting firm partnerships, and certain constituent units of which (*i.e.*, Price Waterhouse/US, Price Waterhouse/UK and Price Waterhouse/Luxembourg and Ernst & Young/US, Ernst & Young/UK and Ernst & Young/Luxembourg) are also named as defendants are auditors which have a long history of helping their clients falsify their financial condition and conceal relevant information from regulators. They were auditors for various of the BCCI Banks during the relevant time period, knew that the BCCI Banks were operating in violation of all concepts of good banking practices and without any adequate controls or management systems, had made huge amounts of concealed, bad or false loans, were engaged in the illegal activities detailed herein and were issuing false financial statements to the public and banking regulators, yet they assisted the BCCI Banks to avoid regulatory seizure that would otherwise have occurred many years earlier, in part, by giving false certifications that their financial statements were "true and fair," when, in fact, they were neither.

(d) Defendants Clark M. Clifford and Robert Altman (partners in the law firm of Clifford & Warnke) were lawyers who made millions of dollars representing BCCI and its associates in the United States for years, caused First American to pay their firm millions in fees, even though they were top officers and directors of First American and partners in their law firm at the same time, and also got a guaranteed gross profit of over $22 million in transactions in First American Bank stock where BCCI loaned them the money to buy the stock and guaranteed

them the profit and millions more for representing the banks BCCI illegally controlled and operated in the United States. With knowledge of the BCCI Banks' illegal activities, Clifford and Altman assisted them in deceiving United States regulators in order to permit them to illegally infiltrate the United States banking system and arranged for loans to important political figures and to later cover up BCCI's illegal activity by, *inter alia*, obstructing justice by providing false information and/or testimony to investigatory agencies, as well as advising one or more witnesses to leave the United States to avoid being subpoenaed by investigating bodies or law enforcement agencies. For instance, BCCI made and later forgave a $150,000 loan to an individual who was the mayor of Atlanta, Georgia, and later the United States Ambassador to the United Nations.

(e) By successfully and secretly infiltrating the United States banking system, BCCI was able to control and direct the activities of several large banks located here to its own advantage and gain, by causing First American Bank and NBG to make loans to many prominent American politicians on very generous terms and other business allies/associates of BCCI and its insiders, CenTrust (its PAC and its officials) to make huge (and often illegal) political contributions to prominent American political figures, as well as loans to other business allies and associates of BCCI and its insiders and Independence Bank to make loans to other BCCI customers or to support BCCI investments or assets in the United States, to make illegal loans to benefit Pharaon and to further illegally infiltrate the American banking system by making loans to a convicted felon to illegally acquire

Viking Savings, which later failed due to the waste and misuse of its assets for making illegal political contributions by Michael Goland, the felon whom Independence Bank financed.

(f) Defendants' wrongdoing has caused enormous economic damage to residents and citizens of the United States, including depositors in the BCCI Banks, the United States banking system, to the FDIC insurance fund and, ultimately, to the American taxpayer. First American Bank has suffered a huge outflow of deposits exceeding $600 million since June, 1990, on top of operating losses of $158 million in 1990, and has non-performing loans of almost $500 million – which has resulted in it signing an operating agreement with federal authorities to improve its lending operations, and, in August, 1991, Clifford and Altman were forced to resign all their positions with First American. CenTrust – which was looted by David Paul to the tune of over $32 million – became insolvent and was ultimately seized by federal regulators – a takeover likely to cost United States taxpayers some $2 billion. Independence Bank has also suffered huge losses, including $15 million in its most recent quarter, while extending loans to a now-convicted felon to buy Viking Savings, which Michael Goland looted and abused to obtain, *inter alia*, political influence, before it failed and was taken over.

9. (a) For many years, BCCI issued annual reports, promotional materials, advertisements and public statements that represented that the Bank was prudently and conservatively managed, was operating legally and in

close collaboration with and under the oversight of banking regulators in several jurisdictions, had huge capital and assured an adequate liquidity.

(b) In mid-May, 1978, a top BCCI executive, Ameer Siddiki, publicly responded to a report that BCCI might be attempting to purchase a United States bank by saying that "under U.S. law we can't buy a bank there. . . . We don't want to go into the U.S. by the back door." This statement, which was disseminated to and reported in the financial press by mail and wire, was false because BCCI already secretly and illegally controlled the NBG and intended to further secretly and illegally infiltrate the United States banking system by purchasing control of First American. BCCI and its officers and directors had a duty to make accurate disclosure about this topic because BCCI chose to voluntarily make a statement about it, had knowledge of the true facts and had the ability to make truthful disclosure.

(c) During 1980-1991, BCCI periodically ran advertisements in several international papers such as the *Arab News* and the *International Herald Tribune* in order to attract deposits. These false ads were mailed to newspapers and the newspapers were in turn delivered by mail to millions of persons. While the precise text of these ads varied, each was intended to convey information indicating that BCCI was a solvent, well-capitalized bank with many billions of dollars in assets. An example of a BCCI advertisement published in the *Arab News* is attached hereto as Exhibit 41. These advertisements were each false and misleading when prepared, published and mailed for the same reasons that BCCI's final statements for those years were false, as specified in ¶308. BCCI, its

officers and directors and Price Waterhouse, Price Waterhouse/US, Price Waterhouse/UK and Price Waterhouse/Luxembourg and Ernst & Young, Ernst & Young/US, Ernst & Young/UK and Ernst & Young/Luxembourg each had a duty to make accurate disclosure about BCCI's financial condition in these advertisements because they had participated in the preparation of the false financial statements and information, were aware that the false and misleading ads were being run, had knowledge of the true facts and had the ability to make or cause to be made truthful disclosure.

(d) Throughout the 1980's, BCCI distributed to potential depositors brochures describing the BCCI Banks which were intended to attract depositors and which included financial information about BCCI's capital and assets which made it appear that the bank was well capitalized and had substantial assets. An example of such brochures is attached as Exhibit 42 hereto. These brochures were each false and misleading when prepared and distributed by mail for the same reasons that BCCI's financial statements for those years were false, as specified in ¶308. BCCI, its officers and directors and Price Waterhouse, Price Waterhouse/US, Price Waterhouse/UK and Price Waterhouse/Luxembourg and Ernst & Young, Ernst & Young/US, Ernst & Young/UK and Ernst & Young/Luxembourg each had a duty to make accurate disclosures about BCCI's financial condition in these brochures because they had participated in the preparation of the false financial statements and information, were aware that false and misleading brochures were being

mailed, had knowledge of the true facts and had the ability to make or cause to be made truthful disclosure.

(e) A brochure issued by BCCI in 1985 (Exhibit 5) stated that BCCI "is adequately supported by a capital fund in excess of $1 billion . . . [its] results show a total shift of emphasis from growth to consolidation, from quantity to quality – an emphasis on high capital/asset ratio, high liquidity, high quality of assets. . . . The focus will continue to accentuate on conservatism and prudence during the next decade."

(f) In 1988, Abedi misrepresented that BCCI was a "totally apolitical" body and "our success so far is due to the honesty and integrity of purpose of the entire staff."

(g) On October 12, 1988, BCCI issued a press release disseminated by mail and wire in the United States in response to its indictment on money laundering charges in federal district court in Florida, falsely stating that "We are doing everything that we can to co-operate with government authorities [and] determine the facts of the matter," that BCCI's policy "is always to follow scrupulously all the laws of each country where we do business" and that BCCI tried to avoid doing business with "firms or individuals of questionable background." This statement was false because BCCI was covering up a wide array of past and ongoing criminal activities from U.S. authorities and it did not have a policy of following the laws of the countries which it did business in but, rather, it consistently violated those laws and was doing a large amount of business with drug dealers, terrorists, arms dealers and other shady characters who were

engaged in illegal conduct. BCCI and its officers and directors had a duty to make disclosure of the true facts necessary to make these statements not false and misleading because they had knowledge of the true facts, BCCI had voluntarily issued a press release about these topics and they had the ability to make truthful disclosure.

(h) On October 12, 1988, an attorney and agent for BCCI made a false statement which was disseminated by wire (and was quoted in the *New York Times*, which was mailed to thousands of persons) that BCCI "has at all times attempted to conduct itself in a manner consistent with United States laws, rules and regulations." This statement was false and misleading because BCCI did not attempt to comply with United States laws but, rather, was engaged in a massive violation of numerous laws and regulations relating to banking, currency transactions, narcotics and the like. This statement was false because BCCI was in fact covering up a wide array of past and ongoing criminal activities from U.S. authorities, it did not have a policy of following the laws of the countries in which it did business but, rather, consistently violated those laws and was doing a large amount of business with drug dealers, terrorists, arms dealers and other shady characters who were engaged in illegal conduct. BCCI and its officers and directors had a duty to make disclosure of the true facts necessary to make these statements not false and misleading because they had knowledge of the true facts, BCCI had voluntarily issued a press release on these topics and they had the ability to make truthful disclosure.

(i) On October 20, 1988, BCCI officials, accompanied by Morrison & Foerster partners Henry M. Fields

("Fields"), L. Richard Fischer ("Fischer") and Robert G. Ballen ("Ballen") met with FRB senior staff members, including William Taylor, Director of the FRB Division of Banking Supervision and Regulation, Donald Kline ("Kline"), Associate Director of the Division of Banking Supervision and Regulation, and William Ryback, Deputy Associate Director. The purpose of the meeting was to discuss growing concerns that FRB senior staff had with BCCI's operations in the U.S. and the relationship between BCCI and First American. At the meeting, Kline expressed significant concern regarding the relationship between BCCI and First American and asked if anyone attending the meeting was prepared to make representations concerning this relationship. Fisher and Fields assured federal regulators that although there was common stock ownership of BCCI and First American through a common group of controlling shareholders, BCCI did not control First American and everything was proper at BCCI despite its recent indictment for money-laundering. With the aid and assistance of the Morrison & Foerster attorneys, BCCI officials also represented that BCCI had met with New York and California state banking regulators and was undertaking a massive voluntary compliance program, over and above what was required by those regulators or the FRB, and requested that the FRB allow BCCI to put its own house in order. The purpose and effect of these false representations to FRB senior staff was to stop any further scrutiny by the regulators, to deceive the regulators and to conceal BCCI's fraudulent activities. Similarly, in connection with its January 16, 1990, Plea Agreement, BCCI lied to the federal government and the federal judiciary by entering into a

plea agreement in which it was represented to the federal court to have "declared to the United States that it has reformed itself through new management and banking practices, including strengthened compliance policies and procedures. Also toward that end, BCCI has agreed to cooperate with law enforcement authorities." This representation was completely false because BCCI had not reformed itself, was not permitting new management to change the way it operated, had not changed its banking practices and was not going to comply with United States laws or cooperate with U.S. law enforcement authorities.

(j) When BCCI finally reported losses in 1988 and 1989, it downplayed the significance of these losses, attributing them to isolated and/or non-recurring factors, received opinions from Price Waterhouse on its financial statements that were unqualified with respect to its financial condition and gave no indication it was suffering from any serious operational, control or financial problems. In fact, in April, 1990, when the BCCI conspiracy was in danger of unraveling from the accumulated effects of years of illegal diversion and waste of its assets, improper lending and improper financial transactions, Price Waterhouse, Price Waterhouse/UK and Price Waterhouse/Luxembourg and several top BCCI executives realized that a major infusion of cash to BCCI was required to avoid its immediate collapse and the exposure of the Ponzi scheme that BCCI actually was conducting. Price Waterhouse, Price Waterhouse/UK and Price Waterhouse/Luxembourg, these executives and others (the "Task Force") undertook a thorough review of BCCI's banking business which easily documented huge irregularities – gross abuse of proper banking and lending

standards – and improper accounting practices, concluding that: "The Task Force feels that the regular annual audit thereof should have easily detected and corrected such haphazard transactions several years ago. . . . It took the Task Force only a few days to note that nearly each of these cases had common patterns of initiation activity, fund flows, weak documentation . . . which any reasonable audit process should have tracked down, identified and stopped forthwith. . . . It is in the interest of all concerned who are involved in safeguarding the existence of BCCI Group – the shareholders, the directors, the management, the auditors and finally, the regulators, to close this matter urgently and allow the Bank's Annual Report to be issued to the public, globally at the earliest. Without this there is now a grave and real danger of a serious 'run' on the Bank worldwide resulting in an uncontrolled situation which would even close the entire Group." Exhibit 35.

(k) Despite their knowledge of the BCCI Banks' prior profligate and illegal practices and their gravely impaired financial condition, defendants conspired to make the grave, indeed fatal, situation in April, 1990, appear positive, with Abu Dhabi supposedly injecting new capital into BCCI, BCCI telling its depositors and the public that BCCI was operating "very normally," the Bank of England was "fully in the picture," there was "no real ground for concern by depositors," and that the movement of the Banks' operations headquarters to Abu Dhabi from London was to save overhead and increase efficiency, and Price Waterhouse and Price Waterhouse/UK issuing an unqualified opinion on BCCI's financial statements, while BCCI top executives and directors

issued strong positive reassuring statements to its depositors and the general public.

(l) In May, 1990, responding to concerns that had been raised about BCCI's relocation of its headquarters to Abu Dhabi, an unidentified spokesperson for BCCI made a statement which was disseminated by mail and wire that BCCI's involvement in money laundering would "never happen again," that relocation to Abu Dhabi was designed to save money and that "there should be no real ground for concern for depositors here. We intend to keep a major presence in the United Kingdom . . . . " These statements were false and misleading because BCCI was continuing to engage in illegal conduct (including money laundering) and due to BCCI's illegal activities and gravely impaired financial condition, depositors were threatened with the imminent loss of a substantial amount of their deposits. BCCI's officers and directors had a duty to make full disclosure regarding this statement because they were aware BCCI had voluntarily made this statement, they knew it was false and they had knowledge of the true facts and the ability to make truthful disclosure.

(m) In the Spring of 1991, the scheme was again about to unravel as BCCI's operations and controls had continued to deteriorate, it had continued to suffer huge losses, impaired cash flow and was riddled with billions in non-performing and/or uncollectible loans. However, Price Waterhouse and Price Waterhouse/UK agreed with BCCI and the Sheikh of Abu Dhabi to once again give the BCCI Banks clean audit opinions if the Sheikh put in another $600 million in capital and agreed to indemnify Price Waterhouse and Price Waterhouse/UK for giving

the clean opinion. By this time, however, United States banking regulators had discovered the true extent of BCCI's operations in the United States and sought to bring about a worldwide coordinated seizure of the BCCI Banks by regulators in several countries. And, before the clean auditor's opinion could be issued, due to certain information provided secretly to the Bank of England by an ex-BCCI employee, Price Waterhouse/UK was ordered by the Bank of England to prepare a report for it, without the knowledge of BCCI and its top executives, as to the condition and practices of the Bank.

(n) In late June, 1991, Price Waterhouse/UK admitted to the Bank of England that there was over $600 million in unrecorded deposits in the BCCI Group and that "the accounting records and financial position of the [BCCI] Group have been falsified in relation to the above transactions for a substantial number of years [and] these transactions represent only a part of a wholesale deception to misrepresent and falsify the financial position of [BCCI] over the last decade through a series of complicated manipulations [including] a significant falsification of the accounting records (involving false loans, transactions, and confirmations) on such a scale that the true financial history of BCCI is unlikely to be able to be recreated . . . " and that "it would appear that the bank has generated significant losses over the last decade and may never have been profitable in its entire history." A few days later, the BCCI Banks were seized in a worldwide coordinated effort of banking regulators in the United States and elsewhere.

10. Among the illegal acts constituting the pattern of racketeering activity and violation of the laws of

nations and treaties of the United States carried out by the BCCI Banks and the defendants herein were:

(a) In the United States, illegally obtaining and maintaining control for BCCI of NBG, First American, CenTrust and Independence Bank by lying to the FRB and other federal banking agencies in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud) and 18 U.S.C. § 1344 (Bank Fraud). These predicate acts occurred with regard to the illegal acquisition and control of NBG during 1975-1991; the illegal acquisition and control of First American during 1978-1991; the illegal acquisition and control of CenTrust during 1985-1989; and the illegal acquisition and control of Independence Bank during 1985-1991. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Price Waterhouse, Price Waterhouse/US, Price Waterhouse/UK, Price Waterhouse/Luxembourg, Ernst & Young, Ernst & Young/US, Ernst & Young/UK, Ernst & Young/Luxembourg, Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Sheikh Adham, Khalil, Jawhary, al-Fulaij, Abedi, Naqvi, Iqbal, al-Mazrui, Lamarche, van Oenen, Twitchin, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Lance, Paul, Independence Bank, Dobrich, Shoaib and Bank of America;

(b) Using its United States agency offices to finance illegal drug transactions of Pablo Escobar and Jorge Ochoa, leaders of the Medellin drug cartel, including transactions involving the illegal transportation of narcotics into the United States in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18

U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), 18 U.S.C. § 1956 (Laundering of Monetary Instruments), 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity) and 18 U.S.C. § 1961(1)(A) (Dealing in Narcotic or Other Dangerous Drugs Punishable Under Laws of U.S.). These predicate acts occurred during 1985-1990. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Capcom, Robert Magness, Lawrence Romrell, Noriega, Lamarche, van Oenen, Al-Mazrui, Hartman, Twitchin, Shafi and Bank of America;

(c) Misusing for illegal purposes and/or stealing (*i.e.*, siphoning off) the deposits of the BCCI Banks, including portions of the deposits of U.S. residents and citizens, parts of which deposits had been obtained in the United States and the diverted portions of which were, in part, used in this country to finance BCCI's illegal infiltration of the U.S. banking system, to pay off Clifford and Altman and to make payments to obstruct United States justice in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), 18 U.S.C. § 201 (Bribery of Public Officials and Witnesses), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1975-1991. Along with

BCCI, the defendants who directly or indirectly participated in these predicate acts along with BCCI were Price Waterhouse, Price Waterhouse/US, Price Waterhouse/UK, Price Waterhouse/Luxembourg, Ernst & Young, Ernst & Young/US, Ernst & Young/UK, Ernst & Young/Luxembourg, Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Sheikh Adham, Khalil, Jawhary, al-Fulaij, Abedi, Naqvi, Iqbal, Awan, al-Mazrui, Rizzi, Akbar, Ahmad, Capcom, Magness, Romrell, Lamarche, van Oenen, Twitchin, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Lance, Paul, Independence Bank, Dobrich, Shoaib, Bank of America and Hill & Knowlton;

(d) Assisting, through its Miami, Florida, operations, Munther Ismael Bilbeisi (brother of a BCCI regional manager) to smuggle $35 million worth of coffee into the United States and sell it to United States buyers, in part through funds and false documents it made available in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), 18 U.S.C. § 1956 (Laundering of Monetary Instruments), 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1983-1985. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad,

Capcom, Lamarche, al-Mazrui, Hartmann, van Oenen, Twitchin and Shafi;

(e) Assisting the now-deposed and arrested Panamanian dictator, Manuel Noriega, in looting the treasury of Panama and stealing its public monies by secretly transferring these funds out of Panama to Noriega's secret bank accounts elsewhere, in part via transfers through BCCI's United States agency offices and First American offices in the United States in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel on Transportation in Aid of Racketeering Enterprises), 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived From Specified Unlawful Activity), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1985-1989. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Capcom, Magnes, Romrell, Noriega, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann, Shafi, First American, Clifford, Altman, Scoffone, Beddow and Adams;

(f) Money-laundering the proceeds of illegal narcotics activities through its Miami, Florida, offices for which several BCCI operatives were convicted in United States District Court for the Southern District of Florida and BCCI pleaded guilty, paid a $15 million fine and was placed on probation for five years in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud),

18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), 18 U.S.C. § 1956 (Laundering of Monetary Instruments), 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity), 18 U.S.C. § 1961(1)(A) (Dealing in Narcotic or Other Dangerous Drugs Punishable Under Laws of U.S.) and 18 U.S.C. § 1961(1)(E) (Acts Indictable Under Currency and Foreign Transactions Reporting Act). These predicate acts occurred during 1984-1988. Along with BCCI, the defendants who directly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Noriega, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann and Shafi;

(g) Making illegal political contributions in the United States, in substantial part through CenTrust's Political Action Committee ("PAC"), its officers, its top customers and certain of their associates, as well as Goland and Viking Savings & Loan, in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud) and 18 U.S.C. § 1344 (Bank Fraud). These predicate acts occurred during 1985-1989. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Paul and Goland;

(h) Assisting Arif Durrani, a Pakistani weapons dealer, to illegally sell and ship (smuggle) arms to Iran,

for which Durrani has been convicted in United States District Court and sentenced to 10 years imprisonment, via letters of credit and monetary transfers from its Los Angeles, California, operations in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises) and 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity). These predicate acts occurred during 1986. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts along with BCCI were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Lamarche, al-Mazrui, Hartman, van Oenen, Twitchin and Shafi;

(i) Undertaking to obtain political influence to hinder, halt, deflect or delay any investigation into their conduct in the United States or by United States law enforcement authorities and to prolong their conspiracy by hiring a phalanx of United States lobbyists – often paying them excessive fees – making huge and often illegal political contributions in the United States through, *inter alia*, CenTrust (as described above) and also Clifford and Altman, and by having First American make large loans on very generous terms to political figures in the United States through the First American in violation of 18 U.S.C. § 201 (Bribery of Public Officials and Witnesses). These predicate acts occurred during 1985-1990. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed,

Abedi, Naqvi, Iqbal, Awan, al-Mazrui, Rizzi, Akbar, Lamarche, van Oenen, Twitchin, Hartmann, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Hill & Knowlton, Paul, Independence Bank, Dobrich, Shoaib, Goland and Bank of America;

(j) Circulating by mail and wire in and into the United States the false and misleading financial statements by BCCI and other false statements by BCCI and of the co-conspirators that BCCI was not operating illegally in the United States, was well capitalized, had sufficient liquidity, was well managed and was working closely and cooperating with regulators in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud) and 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises). These predicate acts occurred during 1985-1991. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Price Waterhouse, Price Waterhouse/US, Price Waterhouse/UK, Price Waterhouse/Luxembourg, Ernst & Young, Ernst & Young/US, Ernst & Young/UK, Ernst & Young/Luxembourg, Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Independence Bank, Dobrich, Shoaib, Bank of America and Hill & Knowlton;

(k) By engaging in the United States in fraudulent sales of securities and deceptive and dishonest acts in connection with CenTrust "selling" $150 million in

subordinated debentures in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud) and 18 U.S.C. § 1961(1)(D) (Fraud in Sale of Securities). These predicate acts occurred during 1988. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Paul and Bank of America;

(l) By engaging in the United States in financial institution, bank, mail and wire fraud in helping to falsify the apparent financial condition of CenTrust Savings Bank to avoid its regulatory seizure, keeping the bank operating for one or two more years and causing the United States to spend hundreds of millions of dollars more to "bail out" that bank when it was finally seized in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud) and 18 U.S.C. § 1344 (Bank Fraud). These predicate acts occurred during 1986-1988. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, al-Mazrui, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, Hartmann and Paul;

(m) Covering up its illegal activities in the United States by making repeated false statements about BCCI's actual control of First American, CenTrust, NBG and Independence Bank; by arranging for a plea bargain in connection with a money-laundering plea in Florida that could bar any further criminal prosecution of BCCI

in the United States by federal authorities; and by lying to federal investigators and grand juries, paying off employees not to "blow the whistle" and advising one or more witnesses (Amjad Awan) to leave the United States to avoid giving testimony to federal law enforcement or investigating agencies in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), 18 U.S.C. § 201 (Bribery of Public Officials and Witnesses), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1975-1991. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts along with BCCI were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Sheikh Adham, Khalil, Jawhary, al-Fulaij, Abedi, Naqvi, Iqbal, Awan, al-Mazrui, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Paul, Independence Bank, Dobrich, Shoaib, Goland, Bank of America, Hill & Knowlton, Morrison & Foerster, Fields, Foster, Rosenblum Parish & Bacigalupi and Bacigalupi;

(n) By helping its Los Angeles agency to funnel at least $3 million in illegal proceeds from an Orange County, California, telemarketing scheme out of the United States in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 1957 (Engaging in Monetary

Transactions in Property Derived from Specified Unlawful Activity), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1985. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Pharaon, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann and Shafi;

(o) By illegally financing the sale of or attempting to finance the sale of French-manufactured military fighter aircraft owned by Argentina to third world countries, including Saddam Hussein's Iraq, from its Miami, Florida, office in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises) and 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity). These predicate acts occurred during 1989. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann and Shafi;

(p) By financing international terrorism including financing and assisting the notorious ANO organization, financing the purchase, sale and delivery of illegal arms (including arms shipped to Saddam Hussein in Iraq) by Abu Nidal and some 10 others, including Samir

Najmeddin, through some 42 accounts involving $50 million in BCCI's London Bank in violation of 18 U.S.C. § 1344 (Bank Fraud) and 18 U.S.C. § 1952 (Interstate and Foreign Travel on Transportation in Aid of Racketeering Enterprises). These predicate acts occurred during 1987. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Lamarche, van Oenen, Twitchin and Shafi;

(q) By assisting the former President of Peru, Alan Garcia, to steal millions from his nation's treasury, funneling the money to secret accounts via the BCCI Bank systems in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1987. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann and Shafi;

(r) By paying some $3 million in bribes to Peruvian Central bankers to obtain deposits from Peru's Central bank in violation of 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1986-1987. Along with

BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/ Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann and Shafi;

(s) By helping Munther Ismael Bilbeisi illegally sell Jordanian helicopters to Guatemala at inflated prices so he could pay kickbacks to relatives of the President of Guatemala and certain high military officials in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1987. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann and Shafi;

(t) Committing bank, financial institution, mail and wire fraud in the United States by obtaining and then maintaining control of four American banks, *i.e.*, First American, NBG, CenTrust and Independence Bank, through the use of secretly compensated nominees and false statements, reports and filings with the Federal Reserve Board ("FRB") and other regulatory authorities in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises) and 18 U.S.C. § 201 (Bribery of Public Officials and Witnesses). These

predicate acts occurred during 1975-1991. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Price Waterhouse, Price Waterhouse/US, Ernst & Young, Ernst & Young/US, Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Sheikh Adham, Khalil, Jawhary, al-Fulaij, Abedi, Naqvi, Iqbal, Awan, al-Mazrui, Hartmann, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Lance, Paul, Independence Bank, Dobrich, Shoaib, Goland, Bank of America and Hill & Knowlton;

(u) In 1988 through wire and mail fraud, purchasing ("parking") in the United States some $35 million in junk bonds issued by CenTrust in order to artificially prop up the financial condition of CenTrust at a time when the regulators were bearing down on it and threatening to close it, which bonds were repurchased from the BCCI Banks and other straw parties by CenTrust at face value shortly after the regulators' inspection of CenTrust was over. This transaction was undertaken deliberately to deceive American banking regulators and help a fraudulently operated savings and loan to stay open longer, which ultimately inflicted great damage on American taxpayers, and constitutes, *inter alia*, financial institution fraud in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud) and 18 U.S.C. § 1961(1)(D) (Fraud in Sale of Securities). These predicate acts occurred during 1988. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance,

Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann, Shafi, Paul and Bank of America;

(v) In 1987, via wire and mail fraud and fraud in the sale of securities occurring here in the United States, causing First American to purchase Pharaon's interest in NBG – which was actually BCCI's interest – at a grossly inflated and unfair price, thus funneling at least $220 million to the BCCI Banks, which monies were utilized by it to help cover up and perpetuate its ongoing fraud in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1987. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Lance and Bank of America;

(w) Paying bribes to top officials of the Peruvian Central Bank in order to get those individuals to cause the government of Peru to place government funds in the BCCI Banks and in paying a $32 million bribe to the former manager of its investment activities in London in order to prevent him from exposing the ongoing fraud and criminal conduct at the BCCI Banks to a United States Senate Subcommittee, which payment was known

to and approved by BCCI's then-auditors, Ernst & Young and/or Ernst & Young/UK in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), 18 U.S.C. § 201 (Bribery of Public Officials and Witnesses), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1986-1987. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Ernst & Young, Ernst & Young/UK, Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Capcom, Magness, Romrell, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann and Shafi;

(x) Permitting the BCCI Banks' branches in Florida to engage in financing illegal narcotics transactions and to engage in money laundering transactions on behalf of drug dealers and then, when that activity was discovered by law enforcement officials, using its political influence to obstruct justice and get an improper plea bargain agreement which permitted it to pay a paltry fine of $15 million, while securing an agreement from federal law enforcement officials which was grossly overbroad in that it purported to commit the United States to never charge the BCCI Banks or its affiliates "with committing any other federal criminal offenses under investigation or known to the government at the time of the execution of this agreement or relating in any manner to the charges disposed of by the agreement" in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18

U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), 18 U.S.C. § 1956 (Laundering of Monetary Instruments), 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity), 18 U.S.C. § 201 (Bribery of Public Officials and Witnesses), 18 U.S.C. § 2314 (Transportation of Stolen Monies), 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies), 18 U.S.C. § 1961(1) (A) (Dealing in Narcotic or Other Dangerous Drugs Punishable Under Laws of U.S.) and 18 U.S.C. § 1961(1)(E) (Acts Indictable Under Currency and Foreign Transactions Reporting Act). These predicate acts occurred during 1984-1989. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Noriega, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann, Shafi, First American, Clifford & Warnke, Clifford, Altman, Bank of America and Hill & Knowlton;

(y) To consistently manufacture false documentation to facilitate inflation of account turnover and concealments of flows of funds involving over 6,500 accounts during a 15-year period, including activities to hide over $600 million in deposits treating them as unrecorded deposits, thus grossly distorting the Banks' financial statements and making hundreds of millions of dollars of fictitious loans, which in fact were nothing more than transfers of money to BCCI insiders and those with whom those insiders had incestuous business and other relationships in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank

Fraud), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1976-1991. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Price Waterhouse, Price Waterhouse/US, Price Waterhouse/UK, Price Waterhouse/Luxembourg, Ernst & Young, Ernst & Young/US, Ernst & Young/UK, Ernst & Young/Luxembourg, Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Sheikh Adham, Khalil, Jawhary, al-Fulaij, Abedi, Naqvi, Iqbal, Awan, al-Mazrui, Hartmann, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin and Shafi;

(z) Acting as personal bankers for and engaging in illegal currency transactions and secret transfers of monies on behalf of Noriega, helping Noriega loot Panama's national treasury through a series of transactions by which they permitted and assisted those parties to appropriate government monies for their own personal use in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1956 (Laundering of Monetary Instruments), 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity), 18 U.S.C. § 2314 (Transportation of Stolen Monies), 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies) and 18 U.S.C. § 1961(1)(E) (Acts Indictable Under Currency and Foreign Transactions Reporting Act). These predicate acts occurred during 1984-1989. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts along with BCCI were Abu Dhabi, Abu Dhabi Investment/Finance,

Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Capcom, Magness, Romrell, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann and Shafi;

(aa) Stealing depositors' monies, including portions of the deposits of U.S. residents and citizens, by permitting BCCI insiders and their friends, relatives and business associates to obtain huge loans that would never be repaid and, in some instances, just taking the money in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1975-1991. Along with BCCI, the defendants who directly and indirectly participated in these predicate acts were Price Waterhouse, Price Waterhouse/ US, Price Waterhouse/UK, Price Waterhouse/ Luxembourg, Ernst & Young, Ernst & Young/US, Ernst & Young/UK, Ernst & Young/ Luxembourg, Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Sheikh Adham, Khalil, Jawhary, al-Fulaij, Abedi, Naqvi, Iqbal, Awan, al-Mazrui, Hartmann, Rizzi, Akbar, Ahmad, Capcom, Magness, Romrell, Lamarche, van Oenen, Twitchin, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Lance, Paul, Independence Bank, Dobrich, Shoaib, Goland, Bank of America and Hill & Knowlton; and

(ab) In the United States illegally accepting deposits from U.S. citizens and/or residents, as well as non-residents, in part with the help of Bank of America and First American, in violation of 18 U.S.C. § 1342 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1985-1990. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/ Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Sheikh Adham, Khalil, Jawhary, al-Fulaij, Abedi, Naqvi, Iqbal, al-Mazrui, Hartmann, Lamarche, van Oenen, Twitchin, Shafi, First American, Clifford, Altman, Scoffone, Beddow, Adams and Bank of America.

11. (a) Thus, among defendants' illegal activities constituting RICO predicate acts, *i.e.*, their pattern of racketeering activity, were bribery, mail fraud, wire fraud, dealing in narcotic drugs, financial institution fraud, bank fraud, obstruction of justice, fraud in the sale of securities, monetary transactions in property from illegal activity and violations of the Currency and Foreign Transactions Reporting Act. In short, BCCI and the other defendants conspired to commit and aided and abetted each other in committing a multi-billion dollar scheme to defraud BCCI's depositors and bank regulators by falsifying bank records to hide illegal loans, asset transfers, money laundering and committed bank fraud totaling millions.

(b) According to Robert M. Morgenthau, the District Attorney for New York County, BCCI was "the largest bank fraud in world financial history." In announcing the State of New York's July, 1991, indictment of BCCI and its top officers for stealing depositors' money here in the United States, he stated:

> This indictment spells out the largest bank fraud in world financial history, . . . BCCI was operated as a corrupt criminal organization throughout its entire 19 year history. It systematically falsified its records. It knowingly allowed itself to be used to launder the illegal income of drug sellers and other criminals. And it paid bribes and kickbacks to public officials.
>
> * * *
>
> By means of this scheme, the defendants obtained more than $20 billion from its depositors, including citizens and foreign nationals in New York City, banks headquartered in Manhattan, central banks of other nations, and thousands of depositors throughout the world, . . . The best estimates indicate at this time that upwards of $5 billion has been lost through this fraud.
>
> The Scheme to Defraud count includes allegations that the defendants paid a bribe of $3 million to the two senior officers of the Central Reserve Bank of Peru, in exchange for receiving deposits from the bank.
>
> The Grand Larceny counts relate to the loss of more than $30 million from the American Express Bank Limited on July 5, 1991, when the Bank of England and regulatory agencies in other nations, including the United States,

ordered the closing of BCCI. Because BCCI obtained the deposits from American Express Bank through fraudulent means, by falsely representing BCCI's financial condition, the losses are thefts.

* * *

In addition, BCCI S.A. is charged with eight counts of Falsifying Business Records in the First Degree, relating to a series of instances on which the bank failed to file currency transaction reports on currency deposits of $10,000 or more in one of the bank's customer accounts, as is required by federal law.

The transactions appear to be instances of money-laundering.

* * *

The corporate structure of BCCI was set up to evade international and national banking laws so that its corrupt practices would be unsupervised and remain undiscovered. . . . The defendants systematically falsified the capital structure of BCCI to make it appear as though it was a solvent, profitable bank secured by the backing of wealthy businessmen from the Middle East.

In fact, much of the bank's capitalization and assets were fictitious and its backing illusory. . . . The defendants created the appearance of respectability by persuading the world leaders to appear with them and defrauded their thousands of depositors, both small and large, who relied on that appearance of respectability.

> This largest of Ponzi schemes is over. . . . But we have much yet to discover about this bank, and much to do in reforming international banking practices. The key to the scheme was that BCCI was structured in such a way so that no single central bank was able to monitor its activities. No foreign bank should be permitted to operate in the United States unless it is supervised by a single, strong central bank and is not bound by bank secrecy laws of another jurisdiction. Without these reforms, the potential for massive worldwide bank fraud remains.

Exhibit 9. According to Robin Leigh-Pemberton, a Governor of the Bank of England, "The culture of the bank is criminal." It has been publicly reported that "[n]othing in the history of modern financial scandals rivals the unfolding saga of the Bank of Credit & Commerce International, the $20 billion rogue empire. . . . Never has a single scandal involved so much money, so many nations or so many prominent people. . . . [I]t is the largest corporate criminal enterprise ever, the biggest Ponzi scheme, the most pervasive money-laundering operation and financial supermarket ever created for the likes of Manuel Noriega, Ferdinand Marcos, Saddam Hussein and the Colombian drug barons." In short, BCCI was the "largest of Ponzi schemes."

(c) On or about December 19, 1991, BCCI agreed to plead guilty (Exhibit 12) to a massive superseding indictment (Exhibit 11) brought here in the United States which identified BCCI as a RICO criminal enterprise and charged that from 1978 forward it used the following illegal methods "to increase the size of the

assets and deposits under the control of the BCCI Group:"

- Seeking deposits of drug proceeds;
- Laundering drug proceeds;
- Seeking deposits from persons who were attempting to evade United States income taxes;
- Using "straws" and nominees to acquire control of United States financial institutions;
- Making and causing to be made false statements or material omissions to regulators in connection with the purchase of United States financial institutions;
- Creating and causing to be created false bank records and engineering sham transactions to deceive United States regulators as to the soundness of United States financial institutions under the control or influence of the BCCI Group or its co-conspirators, in order to obtain regulatory approval for the financial institutions to increase their assets.

On January 24, 1992, BCCI's guilty plea was accepted by the United States District Court for the District of Columbia. Attached as Exhibit 38 hereto is a copy of that Court's Order of Forfeiture, Exhibit A of which details the numerous bank and brokerage accounts BCCI maintained in California, New York, Texas, Florida, Tennessee and Illinois. In 1988, BCCI and several of its officers had also pled guilty to massive federal charges of money-laundering of drug proceeds. *See* Exhibit 6. Because of the foregoing, BCCI is now known as the "Bank of Crooks and Criminals," or the "Bank of Crime and Corruption." For

the convenience of the Court, the table set forth on the following page illustrates the various categories of defendants sued in this action.

[Complaint Excerpted Here]

17. (a) As set forth in greater detail below, in connection with the acts, conduct, combination and conspiracy alleged herein, the defendants and their co-conspirators, directly and indirectly, have used and affected the means and instrumentalities of interstate and foreign commerce, including travel in interstate and foreign commerce, use of the United States mails and interstate and international wire facilities;

(b) This action is not brought on behalf of or for the benefit of BCCI to recover any damages on its behalf, assert any causes of action belonging to it, or remedy any loss suffered by it; rather, this action is brought on behalf of BCCI depositors directly for the damages they suffered due to the operation of BCCI as a criminal enterprise, thus it asserts causes of action belonging to them and which can be asserted only by them. The wrongful conduct of which the plaintiffs complain on the part of defendants was aimed at plaintiffs as depositors and was intended to injure them as such. The damages and injuries suffered by plaintiffs and the members of the class are separate and distinct from any damages or injuries suffered by BCCI and were not suffered as incidental to any injury suffered by BCCI; rather, the injuries complained of herein resulted from breaches of duty directly owed to plaintiffs and to the members of the class and constitute direct and special injuries suffered only by them. Each defendant owed a special duty to plaintiffs

and members of the class separate and apart from whatever duties they may have owed BCCI, and the violation of those duties directly caused the injury sustained by them (*i.e.*, loss of deposits) in violation of 18 U.S.C. § 1962. Each defendant knew that BCCI accepted deposits from members of the public and knew that if BCCI operated in violation of law and/or BCCI insiders misused or diverted deposits, BCCI could be seized or shut down and depositors would be harmed. Each defendant knew that BCCI was, in fact, operating in violation of law and that BCCI insiders were misusing and/or diverting deposits and, further, that defendants' engagement in the conspiracy and/or aiding and abetting BCCI was providing important assistance to the operation of an ongoing criminal enterprise which would injure BCCI's depositors. Each defendant also knew that BCCI was operating illegally in the United States, that it had established and structured in a fashion so as to avoid any overall regulation by a single central bank, that BCCI's depositors were protected by little, if any, government deposit insurance, and, consequently, that any failure or seizure of the Bank would result in significant harm to virtually all of its depositors. Each defendant also owed BCCI's depositors a special duty because, as a result of his/its relationship to BCCI, he/it was in a position to protect the depositors and prevent the losses they have suffered. In addition, each defendant owed a special duty to BCCI's depositors not to conspire with or aid and abet the BCCI criminal enterprise or the association-in-fact enterprise in carrying out illegal activity which would have the foreseeable effect of exposing BCCI to regulatory seizure, thereby directly harming BCCI's depositors; and

(c) The BCCI Banks were seized on July 5, 1991. No single liquidator is in control of all of the BCCI Banks, which are consequently the subject of liquidation proceedings pending in numerous jurisdictions. In January, 1992, a judge of the High Court in the United Kingdom ordered the liquidation of BCCI International, S.A., finding that it was "plainly and hopelessly insolvent." On January 3, 1992, a court in Luxembourg ordered the dissolution and liquidation of the parent company, BCCI (Holdings), S.A., *see* Exhibit 32. Thus, the final liquidation of the parent bank will be carried out in Luxembourg. As of January 30, 1992, the date this Third Amended Complaint was filed, no liquidator has brought any legal action against any defendant named herein to attempt to effectuate any recovery for the BCCI depositors.

III. THE PARTIES AND OTHER IMPORTANT ACTORS

18. (a) Plaintiff Akhtar Hamid ("Hamid") is a United States citizen who resides in California and who deposited $140,000 in a BCCI Bank in London and has been damaged thereby. This plaintiff suffered the following damages to his business and property as a result of defendants' wrongful conduct. Hamid was defrauded into placing his deposit into a criminal enterprise instead of a legitimate bank and his deposits were thus placed into an ongoing "Ponzi scheme," whereby they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were misused or diverted for improper and illegal purposes, or for the benefit of BCCI insiders and their co-conspirators named as defendants herein. Hamid completely lost access to his deposits in BCCI in

July, 1991, when governmental officials in the United States and elsewhere uncovered the ongoing illegal activities of BCCI and its prior misrepresentations to United States regulators, including its illegal infiltration of the United States banking system, and seized BCCI, halting its ongoing operations, including the honoring of any deposits. Instead of having assets of almost $15 billion as previously represented, BCCI has net assets to cover depositors' accounts of less than $1.5 billion and that amount will be further eroded as the result of the operations of BCCI's liquidation estate. Hamid will not receive more than 25% of his deposits back (assuming the controlling stockholder of BCCI contributes $2.3 billion to the liquidation estate, which it is not certain he will do), which amount Hamid will receive at an indefinite time in the future, thus having lost and suffered damage to his property or business of at least 75% of his deposit plus interest since July, 1991.

(b) Plaintiff Shrichand Chawla ("Chawla") is an Indian citizen who has been a resident of Cupertino, California, since 1979. He opened an account at the Hong Kong ("HK") branch of BCCI on or about April 20, 1990, when he deposited US $200,000. Between that date and July 5, 1991, Chawla deposited approximately $1,460,000 into that BCCI Bank. On the date of seizure, Chawla's account balances were $614,647.47 in time deposits and $131.88 in savings. Chawla demanded the return of his BCCI deposits on July 7, 1991. Separately, on July 24, 1991, Chawla demanded the return of US $30,000 which had been wrongfully accepted by the Bank of New York on July 8, 1991. By letter dated September 12, 1991,

Chawla received a distribution of HK $500,000. In addition, by letter dated September 13, 1991, Chawla was requested to confirm his account balances at BCCI. By letter dated September 14, 1991, Chawla received a claim form concerning creditors. By letter dated September 23, 1991, Chawla submitted a claim form concerning the US $30,000 referred to above. Also, by letter dated September 27, 1991, Chawla confirmed his account balances. By letter dated October 1, 1991, Chawla received a check for HK $233,070, which represented 100% of the above-referenced claim in the amount of US $30,000. Chawla has been informed that under a proposal concerning the acquisition of the BCCI Hong Kong branch by the Hongkong Chinese Bank, BCCI depositors, such as Chawla, would receive a total of 85% of their balances as of July 17, 1991, less interim relief already paid. Under this proposal, interest would not be paid on deposits after July 17, 1991. Therefore, even if the proposal referred to above is consummated, Chawla will receive only 85% of his deposits as of July 17, 1991, *i.e.*, $522,562.44. Thus, since Chawla's deposit (excluding the US $30,000 which has been reimbursed) was $614,779.35, Chawla will sustain a loss of interest and damage to his business as a result of over $600,000 being frozen since July, 1991. Chawla suffered the following damages to his business and property as a result of defendants' wrongful conduct. Chawla was defrauded into placing his deposit into a criminal enterprise instead of a legitimate bank and his deposits were thus placed into an ongoing "Ponzi scheme," whereby they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were misused or diverted for improper and illegal purposes or for the benefit of

BCCI insiders and their co-conspirators named as defendants herein. Plaintiff Chawla completely lost access to his deposits in BCCI in July, 1991, when governmental officials in the United States and elsewhere uncovered the ongoing illegal activities of BCCI and its prior misrepresentations to United States regulators, including its illegal infiltration of the United States banking system, and seized BCCI, halting its ongoing operations including the honoring of any deposits. Instead of having assets of almost $15 billion as previously represented, BCCI has net assets to cover depositors' accounts of less than $1.5 billion and that amount will be further eroded as the result of the operations of BCCI's liquidation estate. Chawla will not receive more than 85% of his deposits back (assuming the controlling stockholder of BCCI contributes $2.3 billion to the liquidation estate, which it is not certain he will do), which amount plaintiff Chawla will receive at an indefinite time in the future, thus having lost and suffered damage to his property or business of at least 15% of his deposit plus interest since July, 1991.

(c) Plaintiff Soha, Inc. ("Soha") is an Oregon corporation with its principal place of business located in the County of San Diego, California, which currently has deposits of approximately $125,000 in the BCCI Los Angeles agency and has been damaged thereby. Soha suffered the following damages to its business and property as a result of defendants' wrongful conduct. In 1987, Soha was defrauded into placing its deposit into a criminal enterprise instead of a legitimate bank and its deposits were thus placed into an ongoing "Ponzi scheme," whereby they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were

misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein. Soha completely lost access to its deposits in BCCI in July, 1991, when governmental officials in the United States and elsewhere uncovered the ongoing illegal activities of BCCI and its prior misrepresentations to United States regulators, including its illegal infiltration of the United States banking system, and seized BCCI, halting its ongoing operations including the honoring of any deposits. Instead of having assets of almost $15 billion as previously represented, BCCI has net assets to cover depositors' accounts of less than $1.5 billion and that amount will be further eroded as the result of the operations of BCCI's liquidation estate. Soha will not receive more than 25% of its deposits back (assuming the controlling stockholder of BCCI contributes $2.3 billion to the liquidation estate, which it is not certain he will do), which amount Soha will receive at an indefinite time in the future, thus having lost and suffered damage to its property or business of at least 75% of its deposit plus interest since July, 1991.

(d) Plaintiff Idriss Devco, Inc. ("Idriss") is a California corporation with its principal place of business located in the County of San Diego, California, which deposited approximately $2 million in the BCCI Los Angeles agency and has been damaged thereby. Idriss suffered the following damages to its business and property as a result of defendants' wrongful conduct. In 1989, Idriss was defrauded into placing its deposit into a criminal enterprise instead of a legitimate bank and its deposits were thus placed into an ongoing "Ponzi scheme," whereby they were used to finance the ongoing

operation of the BCCI criminal enterprise and/or were misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein. Idriss completely lost access to its deposits in BCCI in July, 1991, when governmental officials in the United States and elsewhere uncovered the ongoing illegal activities of BCCI and its prior misrepresentations to United States regulators, including its illegal infiltration of the United States banking system, and seized BCCI, halting its ongoing operations including the honoring of any deposits. Instead of having assets of almost $15 billion as previously represented, BCCI has net assets to cover depositors' accounts of less than $1.5 billion and that amount will be further eroded as the result of the operations of BCCI's liquidation estate. Idriss will not receive more than 25% of its deposits back (assuming the controlling stockholder of BCCI contributes $2.3 billion to the liquidation estate, which it is not certain he will do), which amount Idriss will receive at an indefinite time in the future, thus having lost and suffered damage to its property or business of at least 75% of its deposit plus interest since July, 1991.

(e) Plaintiff S & L Gentrade, Inc. ("Gentrade") is an offshore corporation incorporated in the United Kingdom which, together with Idriss, deposited approximately $2 million in the BCCI Los Angeles agency and has been damaged thereby. Gentrade suffered the following damages to its business and property as a result of defendants' wrongful conduct. Gentrade was defrauded into placing its deposit into a criminal enterprise instead of a legitimate bank and its deposits were thus placed into an ongoing "Ponzi scheme," whereby they were used to finance the

ongoing operation of the BCCI criminal enterprise and/or were misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein. Gentrade completely lost access to its deposits in BCCI in July, 1991, when governmental officials in the United States and elsewhere uncovered the ongoing illegal activities of BCCI and its prior misrepresentations to United States regulators, including its illegal infiltration of the United States banking system, and seized BCCI, halting its ongoing operations including the honoring of any deposits. Instead of having assets of almost $15 billion as previously represented, BCCI has net assets to cover depositors' accounts of less than $1.5 billion and that amount will be further eroded as the result of the operations of BCCI's liquidation estate. Gentrade will not receive more than 25% of its deposits back (assuming the controlling stockholder of BCCI contributes $2.3 billion to the liquidation estate, which it is not certain he will do), which amount Gentrade will receive at an indefinite time in the future, thus having lost and suffered damage to its property or business of at least 75% of its deposit plus interest since July, 1991. As noted above, these plaintiffs' deposits in the BCCI Los Angeles agency were made at the direction of BCCI through Security Pacific National Bank and Bank of America. These plaintiffs have made numerous oral demands to the California Superintendent of Banks since BCCI's seizure on July 5, 1991, and have made written demand for the return of their funds on deposit on December 27, 1991. Although these plaintiffs have continued to negotiate with the liquidator appointed by the California Superintendent of Banks since the seizure in an attempt to obtain their

funds on deposit, the liquidator has refused to pay said funds to the plaintiffs except as an offset against alleged loan balances. The liquidator has orally represented that the liquidator is empowered to offset the plaintiffs' deposits against alleged loan balances but has continuously refused to pay the deposit funds to plaintiffs in accordance with plaintiffs' demands. Even if the deposits are offset against alleged loan balances, these plaintiffs will have lost the use of those substantial funds (approximately $2,125,000) since the seizure.

(f) Plaintiff Philip Merz ("Merz") is a United States citizen and resident of Beaver, Pennsylvania who deposited $52,924.85 in a BCCI Bank in Luxembourg and has been damaged thereby. Merz made his initial deposit in a BCCI Bank in 1981 in reliance upon representations made in an advertisement placed by BCCI in the *Arab News*, as well as representations made by BCCI in a letter dated April 9, 1988, and a brochure entitled "BCCI – International and Personal Banking in Luxembourg." Merz suffered the following damages to his business and property as a result of defendants' wrongful conduct. Merz was defrauded into placing his deposit into a criminal enterprise instead of a legitimate bank and his deposits were thus placed into an ongoing "Ponzi scheme," whereby they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein. Merz completely lost access to his deposits in BCCI in July, 1991, when governmental officials in the United States and elsewhere uncovered the

ongoing illegal activities of BCCI and its prior misrepresentations to United States regulators, including its illegal infiltration of the United States banking system, and seized BCCI, halting its ongoing operations, including the honoring of any deposits. Instead of having assets of almost $15 billion as previously represented, BCCI has net assets to cover depositors' accounts of less than $1.5 billion and that amount will be further eroded as the result of the operations of BCCI's liquidation estate. Merz will not receive more than 25% of his deposits back (assuming the controlling stockholder of BCCI contributes $3 billion to the liquidation estate, which it is not certain he will do), which amount Merz will receive at an indefinite time in the future, thus having lost and suffered damage to his property or business of at least 75% of his deposit plus interest since July, 1991.

(g) Plaintiff Amit Pandya ("Pandya") is a United States citizen and resident of the Washington, D.C., area who between 1978 and 1991 deposited £30,000 in a BCCI Bank in London in an account of which he is a trustee for the benefit of his mother and has been damaged thereby. This plaintiff suffered the following damages to his business and property as a result of defendants' wrongful conduct. Pandya was defrauded into placing his deposit into a criminal enterprise instead of a legitimate bank and his deposits were thus placed into an ongoing "Ponzi scheme," whereby they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were misused or diverted for improper and illegal purposes, or for the benefit of BCCI insiders and their co-conspirators named as defendants herein. Pandya completely lost access to his deposits in BCCI in

July, 1991, when governmental officials in the United States and elsewhere uncovered the ongoing illegal activities of BCCI and its prior misrepresentations to United States regulators, including its illegal infiltration of the United States banking system, and seized BCCI, halting its ongoing operations, including the honoring of any deposits. Instead of having assets of almost $15 billion as previously represented, BCCI has net assets to cover depositors' accounts of less than $1.5 billion and that amount will be further eroded as the result of the operations of BCCI's liquidation estate. Pandya will not receive more than 25% of his deposits back (assuming the controlling stockholder of BCCI contributes $2.3 billion to the liquidation estate, which it is not certain he will do), which amount Pandya will receive at an indefinite time in the future, thus having lost and suffered damage to his property or business of at least 75% of his deposit plus interest since July, 1991.

(h) Plaintiff Leo D. Curran ("Curran") is a United States citizen and a resident of Newtown, Pennsylvania, who deposited US $41,042.87 into BCCI/Luxembourg term deposit account no. 03-33505-1 and savings deposit account no. 02-33505-9 in January, 1986. As of the date of seizure, Curran had the same amount of money on deposit at BCCI/Luxembourg. By letter dated August 26, 1991, Curran demanded the return of his deposit. Curran was notified in September, 1991, that BCCI/Luxembourg had been subject to an order of the District Court of Luxembourg appointing a commissioner to supervise the administration of the Bank. He was also informed that the effect of this order was to freeze all accounts of bank depositors. By letter dated October 14,

1991, the Institut Monetair Luxembourgeois informed Curran that his deposits were subject to a deposit protection scheme under the laws of Luxembourg which covers deposits in all currencies up to 500,000 Luxembourg Francs, which was equivalent to US $12,500. The letter was signed on behalf of the Institut Monetair by Andree Billon, Conseiller de direction. In addition, Curran was informed in September, 1991, that his deposits were covered up to a maximum amount of 500,000 Luxembourg Francs by notice provided on BCCI letterhead, which also requested information pursuant to the Luxembourg deposit protection scheme. Therefore, even if such deposit insurance payments are made to Curran, he will sustain a loss of at least US $28,500, even without considering the loss of interest since July 5, 1991. Curran suffered the following damages to his business or property as a result of defendants' wrongful conduct. Curran was defrauded into placing his deposit into a criminal enterprise instead of a legitimate bank and his deposits were thus placed into an ongoing "Ponzi scheme," whereby they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein. Plaintiff Curran completely lost access to his deposits in BCCI in July, 1991, when governmental officials in the United States and elsewhere uncovered the ongoing illegal activities of BCCI and its prior misrepresentations to United States regulators, including its illegal infiltration of the United States banking system, and seized BCCI, halting its ongoing operations including the honoring of any deposits. Instead of having assets of

almost $15 billion as previously represented, BCCI has net assets to cover depositors' accounts of less than $1.5 billion and that amount will be further eroded as the result of the operations of BCCI's liquidation estate. Curran will not receive more than 30% of his deposits back (assuming the controlling stockholder of BCCI contributes $2.3 billion to the liquidation estate, which it is not certain he will do), which amount he will receive at an indefinite time in the future, thus having lost and suffered damage to his property or business of at least 70% of his deposit plus interest since July, 1991.

(i) Plaintiff Niam Musleh ("Musleh") is a citizen of Abu Dhabi who deposited $10,000 in a BCCI Bank in Abu Dhabi and has been damaged thereby. Musleh suffered the following damages to his business and property as a result of defendants' wrongful conduct. Musleh was defrauded into placing his deposit into a criminal enterprise instead of a legitimate bank and his deposits were thus placed into an ongoing "Ponzi scheme," whereby they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein. Musleh completely lost access to his deposits in BCCI in July, 1991, when governmental officials in the United States and elsewhere uncovered the ongoing illegal activities of BCCI and its prior misrepresentations to United States regulators, including its illegal infiltration of the United States banking system, and seized BCCI, halting its ongoing operations, including the honoring of any deposits. Instead of having assets of almost $15 billion as previously represented, BCCI has

net assets to cover depositors' accounts of less than $1.5 billion and that amount will be further eroded as the result of the operations of BCCI's liquidation estate. Musleh will not receive more than 25% of his deposits back (assuming the controlling stockholder of BCCI contributes $2.3 billion to the liquidation estate, which it is not certain he will do), which amount he will receive at an indefinite time in the future, thus having lost and suffered damage to his property or business of at least 75% of his deposit plus interest since July, 1991.

(j) Plaintiff Willy Hermans ("Hermans") is a citizen of the Netherlands and a resident of the Cayman Islands who deposited $74,000 in a BCCI Bank in Grand Cayman and has been damaged thereby. Hermans suffered the following damages to his business and property as a result of defendants' wrongful conduct. Hermans was defrauded into placing his deposit into a criminal enterprise instead of a legitimate bank and his deposits were thus placed into an ongoing "Ponzi scheme," whereby they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein. Hermans completely lost access to his deposits in BCCI in July, 1991, when governmental officials in the United States and elsewhere uncovered the ongoing illegal activities of BCCI and its prior misrepresentations to United States regulators, including its illegal infiltration of the United States banking system, and seized BCCI, halting its ongoing operations, including the honoring of any deposits. Instead of having assets of almost $15 billion as previously represented, BCCI has

net assets to cover depositors' accounts of less than $1.5 billion and that amount will be further eroded as the result of the operations of BCCI's liquidation estate. Hermans will not receive more than 25% of his deposits back (assuming the controlling stockholder of BCCI contributes $2.3 billion to the liquidation estate, which it is not certain he will do), which amount he will receive at an indefinite time in the future, thus having lost and suffered damage to his property or business of at least 75% of his deposit plus interest since July, 1991.

(k) Plaintiff Red Circle Investments, Ltd. ("Red Circle") is a Grand Cayman corporation which deposited in excess of $687,000 in a BCCI Bank in Grand Cayman and has been damaged thereby. Red Circle suffered the following damages to its business and property as a result of defendants' wrongful conduct. Red Circle was defrauded into placing its deposit into a criminal enterprise instead of a legitimate bank and its deposits were thus placed into an ongoing "Ponzi scheme," whereby they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein. Red Circle completely lost access to its deposits in BCCI in July, 1991, when governmental officials in the United States and elsewhere uncovered the ongoing illegal activities of BCCI and its prior misrepresentations to United States regulators, including its illegal infiltration of the United States banking system, and seized BCCI, halting its ongoing operations, including the honoring of any deposits. Instead of having assets of almost $15 billion as previously represented, BCCI has

net assets to cover depositors' accounts of less than $1.5 billion and that amount will be further eroded as the result of the operations of BCCI's liquidation estate. Red Circle will not receive more than 25% of its deposits back (assuming the controlling stockholder of BCCI contributes $2.3 billion to the liquidation estate, which it is not certain he will do), which amount it will receive at an indefinite time in the future, thus having lost and suffered damage to its property or business of at least 75% of its deposit plus interest since July 1991.

(l) Plaintiffs Sadik Mahmoud Hashim ("Hashim") and Nuha Hussain Mubarek ("Mubarek"), husband and wife, are Iraqi citizens, permanent residents of Canada and expect to become Canadian citizens by May, 1992. Mubarek opened account no. 2035814 at BCCI/Abu Dhabi in October, 1980, and Hashim opened account no. 2033765 at BCCI/Abu Dhabi in August, 1980. Both accounts were in Dirhams (the local currency of the United Arab Emirates). On December 5, 1987, Hashim and Mubarek, at BCCI's request, opened a U.S. Dollar Term Deposit Account in London, with an opening balance of $65,000. [Account no. 03083322 at a BCCI/London (Park Lane branch) Expatriate and Personal Banking Department.] "High Interest Cheque Account" (account no. 06002194) also was opened at that time. On June 8, 1989, Hashim and Mubarek opened a parallel Pound Sterling Term Deposit Account (account no. 01066316) at BCCI/London (Park Lane branch, Expatriate and Personal Banking Department). On August 29, 1990, BCCI changed all of the account numbers at the London (Park Lane) branch:

Old	New
03083322($)	03583322
06002194($)	06502194
01066316(£)	01566316

As of July 14, 1991, the accounts contained the following balances:

Account	Balance
03583322	US$ 64,208.14
06502194	US$ 3,295.36
01566316	£ 20.71

The money was deposited initially in account no. 2035814 at BCCI/Abu Dhabi. By June 7, 1988, all of the money was transferred to BCCI/London (Park Lane branch). Hashim and Mubarek received a claim form from Touche Ross dated August 7, 1991, which they completed and returned. In addition to the above-referenced amounts, Hashim and Mubarek have lost interest on their deposits since July 5, 1991. Hashim and Mubarek suffered the following damages to their business and property as a result of defendants' wrongful conduct. They were defrauded into placing their deposit into a criminal enterprise instead of a legitimate bank and their deposits were thus placed into an ongoing "Ponzi scheme," whereby they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein. Hashim and Mubarek completely lost access to their deposits in BCCI in July, 1991, when governmental officials in the United States and elsewhere uncovered the ongoing illegal activities of BCCI and its

prior misrepresentations to United States regulators, including its illegal infiltration of the United States banking system, and seized BCCI, halting its ongoing operations including the honoring of any deposits. Instead of having assets of almost $15 billion as previously represented, BCCI has net assets to cover depositors' accounts of less than $1.5 billion and that amount will be further eroded as the result of the operations of BCCI's liquidation estate. They will not receive more than 25% of their deposits back (assuming the controlling stockholder of BCCI contributes $2.3 billion to the liquidation estate, which it is not certain he will do), which amount they will receive at an indefinite time in the future, thus having lost and suffered damage to their property or business of at least 75% of their deposit plus interest since July, 1991.

(m) Plaintiff Jaleh Khorassanchy is a resident of Los Angeles, California, who maintains dual French and Iranian citizenship. In late 1978 or early 1979, she began depositing money into certificate of deposit accounts at the BCCI Bank located in Paris, France, and on July 5, 1991, she had on deposit there British £12,098.79, 37,326.23 Deutsche marks and US $3,568.31. While in Paris in October, 1991, Ms. Khorassanchy met with a BCCI representative (Mr. Jetpurwalla) who, in response to her demand, stated that she would receive little, if anything; moreover, France has no deposit insurance. In addition, Ms. Khorassanchy has lost interest on her money since July 5, 1991. Ms. Khorassanchy suffered the following damages to her business or property as a result of defendants' wrongful conduct. Khorassanchy was

defrauded into placing her deposit into a criminal enterprise instead of a legitimate bank and her deposits were thus placed into an ongoing "Ponzi scheme," whereby they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein. Plaintiff Khorassanchy completely lost access to her deposits in BCCI in July, 1991, when governmental officials in the United States and elsewhere uncovered the ongoing illegal activities of BCCI and its prior misrepresentations to United States regulators, including its illegal infiltration of the United States banking system, and seized BCCI, halting its ongoing operations including the honoring of any deposits. Instead of having assets of almost $15 billion as previously represented, BCCI has net assets to cover depositors' accounts of less than $1.5 billion and that amount will be further eroded as the result of the operations of BCCI's liquidation estate. Khorassanchy will not receive more than 25% of her deposits back (assuming the controlling stockholder of BCCI contributes $2.3 billion to the liquidation estate, which it is not certain he will do), which amount she will receive at an indefinite time in the future, thus having lost and suffered damage to her property or business of at least 75% of her deposit plus interest since July, 1991.

19. (a) Bank of Credit & Commerce International, S.A. ("BCCI S.A."), Bank of Credit & Commerce International (Overseas) Limited ("BCCI Overseas"), Bank of Credit & Commerce International Holdings (Luxembourg) S.A. ("BCCI Holdings"), International Credit &

Investment Company (Overseas) Limited ("ICIC Overseas"), International Credit & Investment Company Holdings ("ICIC Holdings") and Credit and Commerce American Holdings, N.V. and Credit and Commerce American Investment, B.V. ("CCHA") (collectively "BCCI") are a group of banks and corporations in various countries under common ownership and control, founded by Agha Hasan Abedi, Swaleh Naqvi, BankAmerica Corp. and Sheikh Zayed al-Nahayan in 1972. The terms "BCCI" and "BCCI Banks" do not include any of the banks in the United States which BCCI illegally controlled and operated. Because of BCCI's ownership and control of First American Bank, Independence Bank, National Bank of Georgia and CenTrust Bank, BCCI and/or the BCCI Banks were each bank holding companies under the laws of the United States and subject to all the reporting requirements, regulations, laws and restrictions of any United States bank holding company. In July, 1991, the BCCI Banks filed for bankruptcy in the United States District Court for the Southern District of New York. *See* Exhibit 22. Were it not for the injunction entered by that court against the filing or prosecution of suits against BCCI, BCCI would be named as a defendant in this Third Amended Complaint. BCCI has also been the subject of liquidation proceedings in London, Luxembourg and elsewhere, has been ordered to be liquidated in Luxembourg and will be many billions short of ever repaying its depositors;

(b) BCCI Holdings is a foreign company existing and doing business under the laws of Luxembourg and is a company for purposes of the United States Bank Holding Company ("BHC") Act, 12 U.S.C. § 1841, *et seq.*

BCCI Holdings owned or controlled Bank of Credit & Commerce International S.A., Luxembourg ("BCCI S.A.") and Bank of Credit & Commerce International (Overseas), Georgetown, Cayman Islands ("BCCI Overseas") and, through agents and nominees, CCHA and its subsidiary United States bank holding companies and banks, First American, NBG, CenTrust, Independence Bank and Viking Savings & Loan ("Viking Savings") of Santa Monica, California;

(c) BCCI S.A. is a foreign bank existing and doing business under the laws of Luxembourg and is a company for purposes of the BHC Act. BCCI S.A. operated agencies in New York City, New York; Los Angeles, Beverly Hills and San Francisco, California; and Miami, Tampa and Boca Raton, Florida. On July 5, 1991, the Luxembourg Monetary Institute took action to seize BCCI S.A. in Luxembourg, the Bank of England seized its operations in England and United States federal and state banking regulators seized its operations and assets located in this country;

(d) BCCI Overseas is a foreign bank existing and doing business under the laws of the Cayman Islands and is a company for purposes of the BHC Act. BCCI Overseas operated agencies in Los Angeles, Beverly Hills and San Francisco, California; Miami, Tampa, and Boca Raton, Florida; New York City, New York; and Washington, D.C. On July 5, 1991, the Inspector of Banks and Trust Companies, Cayman Islands, took action to seize BCCI Overseas;

(e) ICIC Overseas is a foreign bank existing and doing business under the laws of the Cayman Islands and

is a company for purposes of the BHC Act. On July 5, 1991, the Inspector of Banks and Trust Companies, Cayman Islands, took action to seize ICIC Overseas. ICIC Overseas operated under the control of and at the direction of senior BCCI management, including Abedi and Naqvi, to further the business objectives of BCCI, and acted as the alter ego or agent for BCCI in connection with the acquisition of CCHA and a number of other transactions. The ownership, management and business activities of BCCI and ICIC Overseas were intermingled and interrelated in such a way that the two groups generally operated as a single entity; and

(f) By reason of their operation of agencies in the United States, the various entities comprising BCCI were, at all times pertinent hereto, subject to the provisions of the International Banking Act of 1978 (the "IB Act"), 12 U.S.C. § 3101 *et seq.*, Regulation K, 12 C.F.R. Part 211, and Section 8 of the Federal Deposit Insurance Act (the "FDI Act"), 12 U.S.C. § 1818. By reason of their ownership or control of the voting shares of CCHA, NBG and Independence, BCCI Holdings, BCCI S.A., BCCI Overseas and ICIC Overseas also are and have been, at all times pertinent hereto, bank holding companies, or affiliates thereof, subject to the provisions of the BHC Act and Regulation Y. In addition, in 1989, BCCI Holdings, BCCI S.A., BCCI Overseas and their directors and these entities' officers in New York, Los Angeles, San Francisco, Miami, Tampa and Boca Raton entered into a Consent Order with the Federal Reserve pursuant to the FDI Act in which they agree to take specific action to comply with numerous United States currency and banking laws.

20. (a) Defendants Agha Hasan Abedi ("Abedi"), Swaleh Naqvi ("Naqvi") and Sheikh Zayed al-Nahayan ("Sheikh Zayed" or "al-Nahayan") are individuals who, along with BankAmerica Corp., in 1972 founded and for many years thereafter controlled and directed the operations of the BCCI Banks or Group;

(b) Defendant Abedi was, at all times pertinent hereto, an officer and director of BCCI Holdings and BCCI S.A. and a director of ICIC Overseas. By reason of the positions he held, Abedi was at all times pertinent hereto an institution-affiliated party of BCCI, as defined for the purposes of this Complaint by §§ 3(u) and 8(b) (3) and (4) of the FDI Act, 12 U.S.C. §§ 1813(u) and 1818(b) (3) and (4). As an institution-affiliated party, Abedi is subject to the removal and prohibition provisions of the FDI Act, 12 U.S.C. § 1818(e). This defendant is liable under § 1962 of RICO because he:

(i) Knowingly aided and abetted the BCCI criminal enterprise or the association-in-fact enterprise in committing the pattern of racketeering activity specified herein;

(ii) Conspired with the BCCI criminal enterprise or the association in fact enterprise and the other defendants to commit the pattern of racketeering activity specified herein;

(iii) Used or invested income which he received from his participation in the pattern of racketeering activity complained of herein to assist in the operation of the BCCI criminal enterprise or the association-in-fact enterprise;

(iv) Through the pattern of racketeering activity complained of herein, acting directly or indirectly he acquired or maintained an interest in the BCCI criminal enterprise or the association-in-fact enterprise; and

(v) By the pattern of racketeering activity complained of herein, he conducted or participated, directly or indirectly, in the conduct of the affairs of the BCCI enterprise or the association-in-fact enterprise.

(c) Defendant Naqvi was, at all times pertinent hereto, a principal officer and director of BCCI S.A., BCCI Overseas and ICIC Overseas. By reason of the positions he held, Naqvi was an institution-affiliated party of BCCI and is subject to the removal and prohibition provisions of the FDI Act. This defendant is liable under § 1962 of RICO because he:

(i) Knowingly aided and abetted the BCCI criminal enterprise or the association-in-fact enterprise in committing the pattern of racketeering activity specified herein;

(ii) Conspired with the BCCI criminal enterprise or the association-in-fact enterprise and the other defendants to commit the pattern of racketeering activity specified herein;

(iii) Used or invested income which he received from his participation in the pattern of racketeering activity complained of herein to assist in the operation of the BCCI criminal enterprise or the association-in-fact enterprise;

(iv) Through the pattern of racketeering activity complained of herein, acting directly or indirectly

he acquired or maintained an interest in the BCCI criminal enterprise or the association-in-fact enterprise; and

(v) By the pattern of racketeering activity complained of herein, he conducted or participated, directly or indirectly, in the conduct of the affairs of the BCCI enterprise or the association-in-fact enterprise.

(d) Defendant Sheikh Zayed was, at all times pertinent hereto, himself or through a nominee, an officer and director of BCCI Holdings and BCCI S.A., and a director of ICIC Overseas. By reason of the positions he held, al-Nahayan was at all times pertinent hereto an institution-affiliated party of BCCI, as defined for the purposes of this Third Amended Complaint by §§ 3(u) and 8(b)(3) and (4) of the FDI Act, 12 U.S.C. §§ 1813(u) and 1818(b) (3) and (4). As an institution-affiliated party, al-Nahayan is subject to the removal and prohibition provisions of the FDI Act, 12 U.S.C. § 1818(e). In taking the actions complained of herein, al-Nahayan was not acting in his official capacity as the head of state of Abu Dhabi. This defendant is liable under § 1962 of RICO because he:

(i) Knowingly aided and abetted the BCCI criminal enterprise or the association-in-fact enterprise in committing the pattern of racketeering activity specified herein;

(ii) Conspired with the BCCI criminal enterprise or the association-in-fact enterprise and the other defendants to commit the pattern of racketeering activity specified herein;

(iii) Used or invested income which he received from his participation in the pattern of racketeering activity complained of herein to assist in the operation of the BCCI criminal enterprise or the association-in-fact enterprise;

(iv) Through the pattern of racketeering activity complained of herein, acting directly or indirectly he acquired or maintained an interest in the BCCI criminal enterprise or the association-in-fact enterprise; and

(v) By the pattern of racketeering activity complained of herein, he conducted or participated, directly or indirectly, in the conduct of the affairs of the BCCI enterprise or the association-in-fact enterprise.

21. Defendants Yves C. Lamarche ("Lamarche") (a United States citizen), J.D. van Oenen ("van Oenen"), Ghanim Faris al-Mazrui ("al-Mazrui"), Alfred Hartmann ("Hartmann") and P.C. Twitchin ("Twitchin") (a United States resident) were for several years directors of BCCI International. Defendant Saad M. Shafi ("Shafi") (a United States citizen and resident) was for many years the President of BCCI International. Additional information about these defendants is set forth below:

NAME	DESCRIPTION
Yves C. Lamarche	Spent 24 years with Bank of America where he was Senior Vice President.
J.D. van Oenen	Spent 13 years with Bank of America as an officer.
Ghanim Faris al-Mazrui	Chairman, Private Department for Sheikh Zayed bin Sultan al-Nahayan Secretary General, Abu Dhabi Investment Authority.

P.C. Twitchin	Spent many years as Vice President at Bank of America.
Alfred Hartmann	Chairman, Banque de Commerce et de Placements S.A. Switzerland

By reason of the positions they held, these defendants were, at all times pertinent hereto, institution-affiliated parties of BCCI, as defined for the purposes of this Third Amended Complaint by §§ 3(u) and 8(b) (3) and (4) of the FDI Act, 12 U.S.C. §§ 1813(u) and 1818(b) (3) and (4). As institution-affiliated parties, these defendants are subject to the removal and prohibition provisions of the FDI Act, 12 U.S.C. § 1818(e). These defendants are liable under § 1962 of RICO because they:

(i) Knowingly aided and abetted the BCCI criminal enterprise or the association-in-fact enterprise in committing the pattern of racketeering activity specified herein;

(ii) Conspired with the BCCI criminal enterprise or the association-in-fact enterprise and the other defendants to commit the pattern of racketeering activity specified herein; and

(iii) By the pattern of racketeering activity complained of herein, they conducted or participated, directly or indirectly, in the conduct of the affairs of the BCCI enterprise or the association-in-fact enterprise.

22. Defendant Zafar Iqbal ("Iqbal") was the Chief Executive Officer of BCCI for many years. By reason of the positions he held, Iqbal was, at all times pertinent hereto, an institution-affiliated party of BCCI, as defined for the purposes of this Third Amended Complaint by §§ 3(u) and 8(b) (3) and (4) of the FDI Act, 12 U.S.C.

§§ 1813(u) and 1818(b) (3) and (4). As an institution-affiliated party, Iqbal is subject to the removal and prohibition provisions of the FDI Act, 12 U.S.C. § 1818(e). Defendant Amjad B. Awan ("Awan"), a convicted felon for money-laundering, headed the Panama and Miami offices/agencies of BCCI for many years. Defendant Syed Ziauddin Ali Akbar ("Akbar") was a high-ranking BCCI officer who in the early 1980's ran BCCI's treasury operations, which included currency and financial instrument trading. Due to trades authorized by Akbar, some of which took place in the United States through a Capcom subsidiary and involved United States securities, hundreds of millions of dollars of BCCI funds were siphoned off and when threatened with discharge, Akbar, who was convicted of money-laundering in the United States in connection with his operating Capcom (discussed below), extorted "hush money" payments of $30+ million in return for not giving information about BCCI's pattern of racketeering activity to the authorities, including an investigation by a United States Senate Committee which was seeking to pierce and expose the BCCI conspiracy. Defendant Dildar Rizzi ("Rizzi") was the treasurer of BCCI after Akbar up until BCCI was seized, continued many of the illegal and/or improper practices Akbar had engaged in and was actually involved in BCCI's laundering of illegal narcotics monies through its operations in the United States. Defendant Sani Ahmad ("Ahmad") is a United States citizen who is currently in federal custody in this country as a material witness in the ongoing BCCI criminal investigation. During 1985-1990, Ahmad headed

BCCI's Washington, D.C., office and participated in bribing United States officials and/or regulators. These defendants are liable under § 1962 RICO because they:

(i) Knowingly aided and abetted the BCCI criminal enterprise or the association-in-fact enterprise in committing the pattern of racketeering activity specified herein;

(ii) Conspired with the BCCI criminal enterprise or the association-in-fact enterprise and the other defendants to commit the pattern of racketeering activity specified herein; and

(iii) By the pattern of racketeering activity complained of herein, they conducted or participated, directly or indirectly, in the conduct of the affairs of the BCCI enterprise or the association-in-fact enterprise.

23. (a) Defendant Capcom Financial Services, Inc. (Ltd.) and its United States-based subsidiary, Capcom Futures, Inc., an Illinois corporation based in Chicago, Illinois ("Capcom"), was a currency and financial instrument trading company formed and owned by several BCCI insiders, *i.e.*, Kamal Adham, Abdul R. Khalil, Sayed Jawhary and Pharaon and Akbar – who joined Capcom when he left BCCI in 1986. Capcom played a key role in the pattern of racketeering activity by assisting (i) the Medellin cocaine cartel and other drug trafficking organizations in laundering drug money; (ii) Noriega in transferring and secreting monies he stole from Panama; (iii) BCCI insiders in looting the banks of millions via false or fraudulent transactions; and (iv) facilitating the transfer of the huge hush money payment to Akbar. Capcom was

indicted in connection with the 1988 drug money-laundering scandal in Miami, where BCCI pleaded guilty, and in 1989, Capcom was fined $500,000 by the Chicago Mercantile Exchange for improper documentation of cash transfers. Capcom was expelled for life from the Chicago Board of Trade for misleading/false statements, reckless and unbusiness-like practices, fraud and dishonorable and dishonest conduct. This defendant is liable under § 1962 of RICO because it:

(i) Knowingly aided and abetted the BCCI criminal enterprise or the association-in-fact enterprise in committing the pattern of racketeering activity specified herein;

(ii) Conspired with the BCCI criminal enterprise or the association-in-fact enterprise and the other defendants to commit the pattern of racketeering activity specified herein;

(iii) Used or invested income which it received from its participation in the pattern of racketeering activity complained of herein to assist in the operation of the BCCI criminal enterprise or the association-in-fact enterprise; and

(iv) By the pattern of racketeering activity complained of herein, it conducted or participated, directly or indirectly, in the conduct of the affairs of the BCCI enterprise or the association-in-fact enterprise.

(b) Defendants Robert Magness ("Magness") and Lawrence Romrell ("Romrell") are United States citizens who reside in the Denver, Colorado, area. Magness and Romrell were large shareholders in Capcom and

were two of the six members of the Board of Directors of Capcom Financial Services, Inc. (Ltd.) until October, 1988, while Romrell was the chairman of its board. While holding such positions, Magness and Romrell were in a position to control and did control Capcom's activities. Capcom, as explained above, assisted BCCI to launder money for drug dealers, assisted defendant Noriega in looting Panama's national treasury and assisted in siphoning off BCCI's deposits for the benefit of certain of the defendants named herein, including Sheikh Adham, as well as Magness and Romrell. For instance, in a series of approximately 20 artificial foreign exchange and gold bullion transactions with a United States-based investment fund known as Capital Fund, Capcom funnelled $3 million to the participants in that investment fund, including Sheikh Adham, as a means of compensating him and certain other participants in the Capital Fund for the substantial assistance which they were providing the BCCI criminal enterprise. In addition, Capcom engaged in fake transactions involving at least $23 million for the benefit of Finley International, Ltd. which was, in fact, a front utilized by General Noriega and, thus, funneled this $23 million from Panama through BCCI and Capcom to Finley and on to Noriega. In addition, in 1987, Romrell and Magness received personal unsecured loans from Capcom for $400,000 and $100,000 each which they utilized to help fund the operations of a brokerage concern affiliated with Capcom and in which Capcom had a majority interest. These defendants are liable under § 1962 of RICO because they:

(i) Knowingly aided and abetted the BCCI criminal enterprise or the association-in-fact enterprise in

committing the pattern of racketeering activity specified herein;

(ii) Conspired with the BCCI criminal enterprise or the association-in-fact enterprise and the other defendants to commit the pattern of racketeering activity specified herein;

(iii) Used or invested income which they received from their participation in the pattern of racketeering activity complained of herein to assist in the operation of the BCCI criminal enterprise or the association-in-fact enterprise;

(iv) Through the pattern of racketeering activity complained of herein, acting directly or indirectly they acquired or maintained an interest in the BCCI criminal enterprise or the association-in-fact enterprise; and

(v) By the pattern of racketeering activity complained of herein, they conducted or participated, directly or indirectly, in the conduct of the affairs of the BCCI enterprise or the association-in-fact enterprise.

24. Defendant Abu Dhabi is a government of which Sheikh Zayed is the head. Defendant Abu Dhabi Finance Department a/k/a Abu Dhabi Investment Authority ("Abu Dhabi Investment/Finance") is owned and controlled by Sheikh Zayed and Abu Dhabi. Defendants Abu Dhabi and Abu Dhabi Investment/Finance, acting directly through agents and officials and members of the royal family and in a commercial capacity, have been involved with the BCCI Banks since their formation and members of its ruling family and other powerful Abu

Dhabi citizens have benefitted by the racketeering activity, by receiving huge "loans" from BCCI which have never been repaid. In so acting, none of the members of the royal family of Abu Dhabi were acting in their official capacities but, rather, in their personal capacity and for their own enrichment. Sheikh Zayed, of Abu Dhabi was a founding shareholder of BCCI, owned more than 30% of its stock and had representation on its Board of Directors at all times through defendant al-Mazuri, who was the head of Sheikh Zayed's personal finance department. Sheikh Zayed consistently used his control of BCCI for his own benefit. For instance, he forced companies doing business with Abu Dhabi to finance such transactions by borrowing money from BCCI or making large deposits there. In addition, Sheikh Zayed and certain members of his family, *i.e.*, Sheikh Hamden, Sheikh Khelifa, Sheikh Mobid and Sheikh Mubarek (all members of the al-Nahayan family) obtained huge loans from BCCI. BCCI financed secretly owned al-Nahayan family projects, such as a large office building located at 330 Madison Avenue in New York City, on preferential terms and totaling at least $400 million, not counting many millions more in loans to Abu Dhabi state-controlled companies in Sheikh Zayed's domain. When certain illegal transactions with BCCI nominees and strawmen and the diversion of BCCI's assets threatened BCCI's solvency and the ability of Sheikh Zayed and others to continue to operate BCCI as a criminal enterprise, Sheikh Zayed helped to cover up these illegal activities in early 1990 by infusing additional capital into BCCI and buying out millions in bad "loans" to BCCI insiders, thus obtaining control of over 75% of BCCI's stock, moving the headquarters of the bank's

operations to Abu Dhabi and transferring incriminating evidence to that country, as well to prevent its seizure by banking regulators in the event BCCI's operations were seized. These defendants have known of BCCI's fraudulent and criminal activities for many years, yet permitted them to continue. These defendants are liable under § 1962 of RICO because they:

(i) Knowingly aided and abetted the BCCI criminal enterprise or the association-in-fact enterprise in committing the pattern of racketeering activity specified herein;

(ii) Conspired with the BCCI criminal enterprise or the association-in-fact enterprise and the other defendants to commit the pattern of racketeering activity specified herein;

(iii) Used or invested income which they received from their participation in the pattern of racketeering activity complained of herein to assist in the operation of the BCCI criminal enterprise or the association-in-fact enterprise;

(iv) Through the pattern of racketeering activity complained of herein, acting directly or indirectly they acquired or maintained an interest in the BCCI criminal enterprise or the association-in-fact enterprise; and

(v) By the pattern of racketeering activity complained of herein, they conducted or participated, directly or indirectly, in the conduct of the affairs of the BCCI enterprise or the association-in-fact enterprise.

25. (a) Defendants Ghaith Pharaon ("Pharaon"), Sheikh Kamal Adham ("Adham"), Abdul R. Khalil

("Khalil"), Sayed Jawhary ("Jawhary") and Faisal Saud al-Fulaij ("al-Fulaij") are individuals who actively participated in and profited from the wrongdoing alleged herein and received some $45 million from BCCI to serve as nominees or strawmen for the BCCI Banks to assist them, *inter alia*, in disguising the true ownership of the BCCI Banks and in illegally infiltrating the American banking system and secretly obtaining control of several banks located in the United States. These defendants are liable under § 1962 of RICO because they:

(i) Knowingly aided and abetted the BCCI criminal enterprise or the association-in-fact enterprise in committing the pattern of racketeering activity specified herein;

(ii) Conspired with the BCCI criminal enterprise or the association-in-fact enterprise and the other defendants to commit the pattern of racketeering activity specified herein;

(iii) Used or invested income which they received from their participation in the pattern of racketeering activity complained of herein to assist in the operation of the BCCI criminal enterprise or the association-in-fact enterprise;

(iv) Through the pattern of racketeering activity complained of herein, acting directly or indirectly they acquired or maintained an interest in the BCCI criminal enterprise or the association-in-fact enterprise; and

(v) By the pattern of racketeering activity complained of herein, they conducted or participated,

directly or indirectly, in the conduct of the affairs of the BCCI enterprise or the association-in-fact enterprise.

(b) Adham, al-Fulaij, Khalil, Pharaon and Jawhary are and have been, at all times pertinent hereto, institution-affiliated parties of BCCI, subject to the removal and prohibition provisions of the FDI Act, by reason of their acting as agents or nominees for BCCI and ICIC Overseas, and each is an institution-affiliated party who participated in the conduct of the affairs of BCCI; and

(c) Each of these defendants profited from the scheme, conspiracy and pattern of racketeering activity complained of herein by receiving $45+ million to act as nominees/strawmen for BCCI and by receiving huge "loans" from BCCI which were on extraordinarily generous terms, were unsecured or grossly undersecured, have not had interest paid on them, were not, in most cases, evidenced by signed notes and have not been repaid. For instance:

(i) Defendant Khalil is a Saudi "businessman" who was an active and knowing participant in the pattern of racketeering activity and criminal enterprise complained of. Khalil received "loans" of over $150 million from BCCI without submitting any financial statement, posting any security, paying any interest, or signing any promissory notes and at one point having no formal contact with BCCI for over three years. In fact, these were largely illegal transfers of monies (BCCI deposits) to Khalil personally – or to his associates – without any consideration and these ill-gotten gains were split with Abedi and other co-conspirators;

(ii) The ruling family of Abu Dhabi – Sheikh Zayed al-Nahayan and Sheikh al-Maktum before him – have also taken huge "loans" from BCCI for their personal use without providing adequate documentation, collateral, or even signing promissory notes. Over $125 million in such "loans" were extended to Sheikh al-Maktum before he died and Sheikh Zayed al-Nahayan has treated BCCI as his private "piggy bank" thereafter; for instance, by providing himself with $127 million in "overdraft" protection;

(iii) Defendant Adham is a Saudi "businessman" who was an active and knowing participant in the pattern of racketeering activity and criminal enterprise complained of. Sheikh Adham received "loans" of over $313 million from BCCI without submitting any financial statement, posting any security, paying any interest, or signing any promissory notes and at one point having no formal contact with BCCI for over three years. In fact, these were largely illegal transfers of monies (BCCI deposits) to Adham personally – or his associates – without any consideration and these ill-gotten gains were split with Abedi and other co-conspirators;

(iv) Defendant al-Fulaij obtained over $148 million in "loans" from BCCI which were not for any valid business purpose and on which he paid little, if any, interest and which were not evidenced by any loan agreements, notes, or valid security. In fact, these were largely illegal transfers of monies (BCCI deposits) to al-Fulaij personally – or his associates – without any consideration and these ill-gotten gains were split with defendant Abedi and other co-conspirators; and

(v) Defendant Pharaon obtained over $315 million in "loans" from BCCI, many of which were not for any valid business purpose, on which interest was not paid, most of which were ill-secured and inadequately documented and, in many cases, for which there were no valid promissory notes. In fact, large portions of these loans were largely illegal transfers of monies (BCCI deposits) to Pharaon personally – or his associates – without any consideration and these ill-gotten gains were split with Abedi and other co-conspirators. Defendant Pharaon has a residence in Georgia and operates in the United States through a complex web of owned and controlled entities which are his agents/alter egos. The purpose of Pharaon's method of operation and organization was to conceal his involvement in many transactions in the United States and to insulate and conceal his assets from his creditors. A partial outline of Pharaon's complex of companies is set forth on the following page with each one's state or locale of incorporation indicated. Each of the companies named in this chart and identified with an asterisk is named as a defendant herein, because they are vehicles and instrumentalities of Pharaon's operations and wrongdoing, as well as his agents and alter egos.

(d) As detailed in the following chart, the following entities are owned or controlled, directly or indirectly, by defendant Pharaon and they served as his agents or alter egos, or were the vehicles or instumentalities through which he carried out at least a portion of the pattern of racketeering activity alleged herein:

(i) Concorde Finance & Investments ("Concorde"), a Delaware holding company with its principal

place of business located at Pharaon's Sterling Bluff Plantation in Richmond Hill, Georgia, which is 100% owned by GRP Investments, N.V. ("GRP"), a Netherland Antilles company;

(ii) InterRedec, Inc. ("InterRedec"), a Delaware subsidiary of Concorde with its principal place of business located at Pharaon's above-referenced Georgia plantation;

(iii) GRP, Inc., a Georgia holding company with its principal place of business located at Pharaon's Georgia plantation and which was owned by Pharaon;

(iv) NBG Financial Corporation ("NBGFC"), a Georgia corporation owned by Pharaon. At various times, both GRP, Inc. and NBGFC served as holding companies for NBG;

(v) InterRedec (Georgia) Limited ("IGL"), a Bahamian company which at times owned NBGFC;

(vi) InterRedec (Georgia) N.V., a Netherlands Antilles corporation which at times owned NBGFC;

(vii) River Oaks, Inc., a New York insurance holding company controlled by Pharaon;

(viii) River Oaks Investments, Inc., a Georgia corporation and a subsidiary of InterRedec which maintains its principal place of business at Pharaon's Georgia plantation; and

(ix) Sterling Bluff, Inc., a Georgia corporation and a subsidiary of InterRedec which maintains its principal place of business at Pharaon's Georgia plantation.

26. At all times pertinent hereto, Abedi, Naqvi, al-Nahayan, Lamarche, van Oenen, al-Mazrui, Hartmann, Twitchin, Shafi, Abu Dhabi, Abu Dhabi Investment/ Finance and Iqbal were controlling persons of the BCCI Banks and were in a position to control and did control their business and affairs.

27. Defendant Manuel Noriega ("Noriega") was the dictator of Panama for many years who, utilizing BCCI, looted his nation's treasury of millions of dollars and accepted, transferred to Europe and secreted huge bribes from Colombian and other drug traffickers in return for assisting them in illegally smuggling narcotics into the United States. Noriega is now in federal custody in the United States, where he has been indicted and presently stands trial for violating RICO. Noriega is liable under § 1962 of RICO because he:

(i) Knowingly aided and abetted the BCCI criminal enterprise or the association-in-fact enterprise in committing the pattern of racketeering activity specified herein;

(ii) Conspired with the BCCI criminal enterprise or the association-in-fact enterprise and the other defendants to commit the pattern of racketeering activity specified herein; and

(iii) By the pattern of racketeering activity complained of herein, he conducted or participated, directly or indirectly, in the conduct of the affairs of the BCCI enterprise or the association-in-fact enterprise.

28. (a) Defendant Price Waterhouse & Co. ("Price Waterhouse") is a worldwide partnership of licensed professional accountants, headquartered in New York City, which has major offices located in many cities in the United States (including several offices in California), as well as many countries around the world. In holding itself out to the public as a single, unified firm and in signing its opinions on BCCI's financial statements, Price Waterhouse used only the name "Price Waterhouse," without identifying any constituent unit or partnership.

(b) Price Waterhouse holds itself out to the public as one unified worldwide firm. In a 1991 brochure (Exhibit 1) used to recruit employees and entitled "Price Waterhouse: An Investment In Your Future," Price Waterhouse represented:

> In the United States, Price Waterhouse comprises some 13,000 personnel, including nearly 1,000 partners. Our 115 offices are located in most major cities and metropolitan areas (see insert on back cover). The breadth and depth of our network give you broad latitude in determining where you would like to begin and pursue your career.
>
> Internationally, Price Waterhouse began serving companies doing business overseas decades before some of today's major professional services firms were even formed. Outside the United States, the worldwide organization of Price Waterhouse firms has 33,000 people serving many of the world's most prestigious companies in business and industry through a global network of 450 offices in 111 countries.

The brochure includes a world map that "shows U.S. offices . . . along with a sampling of Price Waterhouse's 450 world wide offices" and designated the United Kingdom and Luxembourg as such offices.

(c) The brochure also informs potential employees that (i) "You may have the opportunity to participate in a tour of duty to New York or Washington, D.C. or elsewhere in the world – perhaps London"; (ii) "Your participation gives you the opportunity to meet hundreds of your colleagues from other Price Waterhouse offices in the United States, as well as overseas, helping you build lasting relationships both here and abroad"; (iii) "Another benefit from your career at Price Waterhouse is your opportunity to participate in our U.S. and international tour of duty programs. . . . [I]f you are interested in working overseas, Price Waterhouse has one of the most extensive international tour programs available in the profession. At any given time, more than 100 U.S. managers are stationed on overseas tours. Recent destinations include the United Kingdom." As an example of the firm's "world practice," the brochure describes a young Price Waterhouse associate who had an overseas tour of duty for "two years in London, working in the firm's financial services industry practice" where his clients included large international banks.

(d) The Price Waterhouse partnership is comprised of numerous partnerships in separate countries, *e.g.*, defendant Price Waterhouse/US (headquartered in the United States), defendant Price Waterhouse/UK (headquartered in London) and defendant Price Waterhouse/Luxembourg (headquartered in Luxembourg), three of the constituent Price Waterhouse partnerships

which were actively involved with BCCI. Price Waterhouse's worldwide organization and practice, including its involvement with BCCI, is overseen and coordinated by PW World Organization and Price Waterhouse World Firm Limited, both of which are headquartered in New York City.

(e) The overall Price Waterhouse worldwide firm, through several of its units, including defendants Price Waterhouse/US, Price Waterhouse/UK and Price Waterhouse/Luxembourg, served as auditors and advisors to the BCCI Banks for many years. Because of the worldwide scope of BCCI's operations, Price Waterhouse's auditing and advisory work for BCCI was performed on a worldwide, coordinated basis – using several Price Waterhouse units – including Price Waterhouse/UK and Price Waterhouse/Luxembourg, which performed significant audit work on the BCCI account and Price Waterhouse/US, which performed substantial audit and regulatory compliance work for Price Waterhouse/UK at the direction of Price Waterhouse/UK, and as its agent on the BCCI account and Price Waterhouse/US, which performed substantial audit and regulatory compliance work for BCCI and its United States agencies, and which coordinated the work done by Price Waterhouse partners based in Caribbean countries, including Grand Cayman, on the BCCI account with Price Waterhouse/UK through Price Waterhouse/US partners, defendants Andrew Nolan ("Nolan") and Martin Baumann ("Baumann"). Price Waterhouse/UK, Price Waterhouse/US and Price Waterhouse/Luxembourg were and are agents of one another.

(f) Defendants Price Waterhouse/UK, Price Waterhouse/US and Price Waterhouse/Luxembourg were engaged by the BCCI Banks to provide "indepe dent" auditing, accounting and management consulting services, tax services, examination and/or review of filings with various regulatory agencies (including, without limitation, certifying the BCCI/US agencies' compliance with a consent decree entered into with U.S. banking regulators as part of the BCCI settlement of criminal money-laundering charges brought against BCCI by the Justice Department in Tampa, Florida), audits and/or reviews of financial statements, including audited and unaudited financial information and cost control consulting for which they received large fees, exceeding $4 million per year in recent years. Price Waterhouse/UK, Price Waterhouse/US and Price Waterhouse/Luxembourg were engaged to and did in fact perform such services with the knowledge and intent that such financial statements would be presented to governmental agencies, members of the financial community, as well as other banks and depositors, and that without such certified statements the BCCI Banks would be unable to continue to operate and obtain deposits.

(g) As a result of the myriad of services they rendered to the BCCI Banks, Price Waterhouse/UK, Price Waterhouse/US and Price Waterhouse/Luxembourg personnel were present at the BCCI Banks' offices in the United States, the United Kingdom and Luxembourg frequently and had continual access to and knowledge of the BCCI Banks' private and confidential corporate financial and business information and, thus, knew or recklessly disregarded the illegal, fraudulent and criminal

conduct alleged herein, including the BCCI Banks' adverse financial condition, illegal activities, improper accounting and business problems which were knowingly concealed from government agencies and the public. Price Waterhouse/UK, Price Waterhouse/US and Price Waterhouse/Luxembourg also assisted the BCCI Banks in deceiving federal and state regulators in the United States and in other jurisdictions. Defendants Price Waterhouse/UK, Price Waterhouse/US and Price Waterhouse/Luxembourg, operating on a coordinated basis, audited BCCI's financial statements for 1987, 1988 and 1989 and, using the name "Price Waterhouse," represented that they had audited the BCCI Banks in accordance with appropriate standards and issued unqualified opinions and certifications with respect thereto that the financial statements were "true and fair" in 1987 and 1989, with a qualification in 1988 relating only to a Florida drug investigation, which was later removed.

(h) Among the purposes of such examinations and audits is to provide regulators with accurate information to enable them to perform their oversight function in a proper and timely fashion and the protection of depositors and, accordingly, Price Waterhouse/UK, Price Waterhouse/US and Price Waterhouse/Luxembourg were required during those years to examine such areas as, *inter alia*, the value and quality of assets, the adequacy of capital, management ability, internal financing, accounting and lending controls, management information systems, related party transactions and future earnings ability and to assure that the BCCI Banks were fit and proper to operate and that their financial statements were

presented fairly and consistently in accordance with applicable accounting standards.

(i) In 1984-1985, BCCI's treasury operations, which were then being run by defendant Akbar, "lost" over $500 million in currency trading. A substantial part of those losses were, in fact, BCCI deposits being siphoned off to BCCI insiders through Capcom. Akbar then left BCCI to run Capcom, receiving in the process a $30+ million payoff from BCCI to keep quiet about BCCI's illegal practices. As a result, BCCI thus needed a new head of its treasury operations; however, it wanted to hire such a person confidentially to lessen the chance of any exposure of the horrible losses which its treasury operations had suffered and which it and Ernst & Young/UK and Price Waterhouse/UK were covering up by falsifying BCCI's 1985, 1986 and 1987 financial statements. Price Waterhouse cooperated with BCCI in this regard, running an advertisement in its name in August, 1987, seeking a new treasury department head for BCCI without disclosing that it was acting on behalf of BCCI and in helping BCCI hire a replacement head. Price Waterhouse proceeded to audit that BCCI department in 1988-1989, a clear violation of its duty of independence.

(j) Price Waterhouse/UK and Price Waterhouse/US also audited the financial condition and statements of the ICIC Foundation, a Cayman Island-based entity which was part of the "black box" operations of BCCI in Grand Cayman. Copies of the audit reports on ICIC Foundation's financial statements for the years ended December 31, 1986, 1987, 1988 and 1989, respectively, are attached hereto as Exhibit 9. The principal asset of the ICIC Foundation was an "unquoted investment" in

5,160,451 shares of BCCI Holdings Luxembourg, S.A., which the directors of ICIC had valued at $40 per share, giving that investment a claimed value of something in excess of US $200 million. Price Waterhouse/UK gave the ICIC Foundation's financial statements a clean opinion for the year ended December 31, 1987. For the years ended December 31, 1988 and December 31, 1989, however, in these private financial statements and opinions thereon, which were not distributed to the public, Price Waterhouse/UK qualified its opinion on the ICIC Foundation's financial statements, stating that it was "unable to satisfy themselves on the appropriateness of the directors' valuation of the company's investment in BCCI." The reason why Price Waterhouse/UK was unable to satisfy itself as to the directors' valuation of BCCI shares was that based upon Price Waterhouse/UK's knowledge of the misleading nature of BCCI's financial statements, its phony financial transactions and the undisclosed material adverse information about the way it was conducting its business, as specified in ¶¶296-307 and 308(a)-(p) hereof, Price Waterhouse/UK knew that a valuation of $40 per share for the BCCI stock could not be justified. While Price Waterhouse/UK was qualifying these private, non-public financial statements of ICIC Foundation due to its inability to justify the valuation placed on BCCI stock as a result of the falsity of its financial statements, it was nevertheless issuing unqualified clean opinions on BCCI's financial statements which were being distributed to government regulators and the public and which indicated a value of BCCI shares of at least $50 per share.

(k) Price Waterhouse/US audited the separate financial statements of BCCI's New York, Los Angeles and San Francisco agencies for the year ended December 31, 1987. These Price Waterhouse/US audit reports falsely reported that the financial statements of those agencies were audited by Price Waterhouse/US in accordance with Generally Accepted Auditing Standards ("GAAS") and that the financial statements of the BCCI agencies were presented in accordance with Generally Accepted Accounting Principles ("GAAP"). In fact, Price Waterhouse/US knew that BCCI's United States agencies did not establish or maintain any general loan loss required by GAAP, despite the fact that these agencies had made hundreds of millions in loans.

(l) The Price Waterhouse/US audit reports of these agencies for the year ended December 31, 1988, reported that BCCI's financial statements and Price Waterhouse's audits were "prepared solely to enable preparations of whole-company financial statements." In fact, the Price Waterhouse engagement letters of October, 1988, had provided that Price Waterhouse would conduct audits "unqualified in scope" of each agency, but the scope of the audit reports were changed (narrowed) after Price Waterhouse staff learned of material adverse information affecting the BCCI agencies including, without limitation (i) problem loans that were non-performing; (ii) written notice by BCCI regulatory counsel that the BCCI agencies had been subjected to extensive examination by the FRB and New York and California regulators and had been advised by various representatives of such banking agencies that some enforcement actions would be taken; and (iii) that the BCCI agencies, consistent with

the policies of the BCCI Central Support Organization, had not established any general loan loss reserves for the U.S. agencies, although they were required to do so by GAAP and sound banking practices. In addition, Price Waterhouse/US knew that the California State Examiner's Report had concluded that the overall condition of BCCI's California agencies was *"unsatisfactory"* as of January 31, 1989. Price Waterhouse reported the *"unsatisfactory"* condition of BCCI's California agencies to Price Waterhouse/UK through a memo from Price Waterhouse/US partner R.M. Fitzgerald to Price Waterhouse partners C.I. Cowan and his colleague S.J. Chapman of Price Waterhouse's London office. Price Waterhouse/US acted under the instructions of Price Waterhouse/UK as its agent in actively assisting the continuing fraud on the U.S. regulatory authorities committed by BCCI through the issuance of false and materially misleading and incomplete audit reports for BCCI's U.S. agencies and by actively counseling BCCI on the utilization of accounting artifices designed to conceal material adverse information from United States regulators and BCCI depositors.

(m) Because Price Waterhouse is, in fact, a worldwide partnership and/or so holds itself out to the public, it is liable to plaintiffs for its acts, and the acts of its constituent units alleged herein. Alternatively, to the extent that Price Waterhouse's purported individual country or regional partnerships are, in fact, separate legal entities, then each of those entities (and all of the partners thereof) are liable to plaintiffs based on the allegations of wrongdoing contained herein as to each purported separate partnership and because in acting in the way they did as alleged herein, they were each acting

as an agent for the other. Defendant Nolan is a partner in Price Waterhouse; Price Waterhouse/US. Defendant Baumann is a United States citizen and resident and partner in Price Waterhouse/US. Defendant Robert R. Bench ("Bench") is a partner in Price Waterhouse/US. Defendant Christopher Cowan ("Cowan") is a partner in Price Waterhouse/UK. Defendants Nolan, Baumann, Bench and Cowan were very actively involved in the work which Price Waterhouse, Price Waterhouse/US, Price Waterhouse/UK and Price Waterhouse/Luxembourg performed for the BCCI Banks and each had knowledge of the undisclosed adverse information about BCCI specified at ¶29(a)-(ao) hereof, the falsity of BCCI's financial statements and Price Waterhouse, Price Waterhouse/US, Price Waterhouse/UK and Price Waterhouse/Luxembourg opinions thereon. Defendants Nolan, Baumann, Bench and Cowan worked together to coordinate the Price Waterhouse entities' audits of BCCI for several years. For instance, defendant Bench was vice chairman of the international banking group at Price Waterhouse, of which BCCI was one of the largest clients. Every Price Waterhouse/US office in a city where BCCI had an agency office in the United States, acting under the overall supervision of Nolan and Baumann, participated in the BCCI audits during 1987-1989. In November, 1989, Cowan, Nolan and other Price Waterhouse, Price Waterhouse/US and Price Waterhouse/UK personnel met with Naqvi and other BCCI personnel in New York for two days to thoroughly review BCCI's operations in the United States. Later in 1989, these same persons met in London as part of the Price Waterhouse, Price Waterhouse/US, Price Waterhouse/UK and Price Waterhouse/

Luxembourg joint effort to put together BCCI's 1989 financial statements without revealing BCCI's illegal operations or huge capital deficit. Nolan, Baumann and Cowan (along with top BCCI officers) also met with FRB officials in late 1988 and 1989 and falsely told them that BCCI was not conducting any full service banking operations in the United States and that certain suspicious wire transfers of monies were legitimate transactions. Also, Price Waterhouse/US learned while doing audit work on BCCI's operations in the U.S. that BCCI had not established any general loan loss reserves for the hundreds of millions of dollars in loans made via BCCI's U.S. agency offices, which materially inflated BCCI's financial results as publicly reported. These defendants are liable under § 1962 of RICO because they:

(i) Knowingly aided and abetted the BCCI criminal enterprise or the association-in-fact enterprise in committing the pattern of racketeering activity specified herein;

(ii) Conspired with the BCCI criminal enterprise or the association-in-fact enterprise and the other defendants to commit the pattern of racketeering activity specified herein;

(iii) In the case of the Price Waterhouse entity defendants, used or invested income they received from their participation in the pattern of racketeering activity complained of herein to assist in the operation of the association-in-fact enterprise; and

(iv) By the pattern of racketeering activity complained of herein, acting conducted or participated

they directly or indirectly, in the conduct of the affairs of the BCCI enterprise or the association-in-fact enterprise.

(n) Defendant Ernst & Young ("Ernst & Young") is a worldwide partnership of licensed professional accountants, headquartered in New York City, which has major offices in many cities located in the United States (including several offices in California), and in many countries around the world. In holding itself out to the public and in signing its opinions on BCCI's financial statements, Ernst & Young used only the name "Ernst & Young," without identifying any constituent unit or partnership. The Ernst & Young partnership is comprised of numerous partnerships in separate countries, *e.g.*, defendant Ernst & Young/US (headquartered in the United States), defendant Ernst & Young/UK (headquartered in London), defendant Ernst & Young/Luxembourg (headquartered in Luxembourg) – three of the constituent Ernst & Young partnerships which were actively involved with BCCI. Ernst & Young's worldwide organization and practice, including its involvement with BCCI, is overseen and coordinated from its headquarters in Cleveland, Ohio.

(o) Ernst & Young holds itself out to the public as a unified, world-wide enterprise. In a brochure published and circulated by Ernst & Young entitled "Ernst & Young – The Leaders' Choice" (Exhibit 2 hereto), Ernst & Young described itself as "the world's leading integrated professional services firm" which "is the auditor of 25 percent of the 1,000 largest global companies" and further represented:

When you join Ernst & Young, you join a global leader. We know that our continued leadership rests on understanding the complex issues raised by today's rapidly changing world, especially in Europe, the Far East, and North America. Our firm's global resources allow us to help clients capitalize on opportunities anywhere in the world.

* * *

The map of Europe is changing, and global business strategies will be altered forever. With over 25,000 people in Europe, Ernst & Young is well-equipped to help clients capitalize on the opportunities of a unified European marketplace.

Our clients are increasingly looking beyond 1992 in Europe. Ernst & Young, with 230 offices in Europe, is well-positioned to help clients with mergers and acquisitions, joint ventures, site selections, and operating strategies.

* * *

As a global professional services firm, we offer extensive career choices. Our growing international practice provides exciting opportunities for our professsionals, [sic] both now and in the years to come.

The brochure also contained a list of "Our Offices Worldwide," which included Ernst & Young's offices in Luxembourg, the United Kingdom and the United States. The brochure also listed "Ernst & Young Facts," which included the following chart:

Worldwide 1990

Revenue (in millions) $5,006

Partners 5,595

Total Personnel 67,200

Number of Countries with E&Y Offices 107

Number of Offices Worldwide 642

(p) The overall Ernst & Young worldwide firm, through several of its units, including Ernst & Young/US, Ernst & Young/UK and Ernst & Young/Luxembourg, served as auditors and advisors to the BCCI Banks for many years. Because of the world-wide scope of BCCI's operations, Ernst & Young's auditing and advisory work for BCCI was performed on a worldwide, coordinated basis, using several Ernst & Young units, including Ernst & Young/UK and Ernst & Young/Luxembourg, which performed significant audit work on the BCCI account, and Ernst & Young/US, which performed substantial audit and regulatory compliance work for BCCI and its United States agencies, and which oversaw and coordinated the work done by Ernst & Young partners based in Caribbean countries, including Grand Cayman, on the BCCI account. Defendants Ernst & Young/UK, Ernst & Young/US and Ernst & Young/Luxembourg were engaged by the BCCI Banks to provide "independent" auditing, accounting and management consulting services, tax services, examination and/or review of filings with various regulatory agencies, audits and/or reviews of financial statements, including audited and unaudited financial information and cost control consulting for which they received large fees. Ernst & Young/UK, Ernst & Young/US and Ernst & Young/Luxembourg were and

are the agents of one another. Ernst & Young/UK, Ernst & Young/US and Ernst & Young/Luxembourg were engaged to and did in fact perform such services with the knowledge and intent that such financial statements would be presented to governmental agencies and members of the financial community, as well as to other banks and depositors, and that without such certified statements the BCCI Banks would be unable to continue to operate and obtain deposits.

(q) As a result of the myriad of services they rendered to the BCCI Banks, Ernst & Young/UK, Ernst & Young/US and Ernst & Young/Luxembourg personnel were present at the BCCI Banks' offices in the United States, the United Kingdom and Luxembourg frequently and had continual access to and knowledge of the BCCI Banks' private and confidential corporate financial and business information and, thus, knew or recklessly disregarded the illegal, fraudulent and criminal conduct alleged herein, including the BCCI Banks' adverse financial condition, illegal activities, improper accounting and business problems which were knowingly concealed from the government and public. Ernst & Young/UK, Ernst & Young/US and Ernst & Young/Luxembourg also assisted the BCCI Banks in deceiving federal and state regulators in the United States and in other jurisdictions.

(r) In the years prior to 1987, using the name of its predecessor Ernst & Whinney, Ernst & Young/UK, Ernst & Young/US and Ernst & Young/Luxembourg audited BCCI's financial statements, represented that it had audited the BCCI Banks in accordance with appropriate standards and issued unqualified opinions and certifications year after year that the statements were "true

and fair." Among the purposes of such examinations and audits is to provide regulators with accurate information so as to enable them to perform their oversight function in a proper and timely fashion and the protection of depositors and, accordingly, Ernst & Young/UK, Ernst & Young/US and Ernst & Young/Luxembourg were required during those years to examine such areas as, *inter alia*, the value and quality of assets, adequacy of capital, management ability, internal financing, accounting and lending controls, management information systems, related party transactions and future earnings ability and to assure that the BCCI Banks were fit and proper to operate and their financial statements were presented fairly and consistently in accordance with applicable accounting standards. Because Ernst & Young is, in fact, a worldwide partnership and/or so holds itself out to the public, it is liable to plaintiffs for its acts (and the acts of its constituent units) as alleged herein. Alternatively, to the extent that Ernst & Young's purported individual country or regional partnerships are, in fact, separate legal entities, each of those entities (and all of the partners thereof) are liable to plaintiffs based on the allegations of wrongdoing contained herein as to each purported separate partnership and because in acting the way they did as alleged herein, they were each acting as an agent for the other. These defendants are liable under § 1962 of RICO because they:

(i) Knowingly aided and abetted the BCCI criminal enterprise or the association-in-fact enterprise in committing the pattern of racketeering activity specified herein;

(ii) Conspired with the BCCI criminal enterprise or the association-in-fact enterprise and the other defendants to commit the pattern of racketeering activity specified herein;

(iii) Used or invested income which they received from their participation in the pattern of racketeering activity complained of herein to assist in the operation of the association-in-fact enterprise; and

(iv) By the pattern of racketeering activity complained of herein, they conducted or participated, directly or indirectly, in the conduct of the affairs of the BCCI enterprise or the association-in-fact enterprise.

29. Credit and Commerce American Holdings N.V./ Credit & Commerce American Investment B.V. (collectively "CCAI," "CCHA" or "CCAH") is a holding company that controlled defendant First American Corp., a bank holding company that controlled defendant First American, a corporation which controls and operates the following banks:

(a) First American Bank of Maryland, Silver Spring, Maryland, state bank, started in 1955, 100% owned;

(b) First American Bank of Virginia, McLean, Virginia, state bank, started in 1959, 100% owned;

(c) Valley Fidelity Bank and Trust Company, Knoxville, Tennessee, state bank, started 1942, 100% owned;

(d) First American Bank of New York ("FABNY"), New York, New York, state bank, started in 1942, 100% owned;

(e) First American Data Services Inc., Reston, Virginia, provides bank services, started in 1975, 100% owned;

(f) National Mortgage Corporation, Washington, D.C., mortgage bankers, started in 1963, 100% owned;

(g) First American Bank of Georgia, N.A., Atlanta, Georgia, national bank, started in 1911, 100% owned;

(h) First American Bank of Pensacola, N.A., Pensacola, Florida, national bank, started in 1986, 100% owned;

(i) First American International Bank, Miami, Florida, agreement corporation, started in 1982, 100% owned;

(j) First Advantage Mortgage Corporation, Columbia, Maryland, mortgage banking, started in 1988, 100% owned; and

(k) First American Bank, N.A. of Washington, Washington, D.C., national bank, started in 1982, 100% owned.

The First American Bank companies were instrumentalities by which the BCCI Banks and the other defendants pursued their wrongful course of criminal conduct, *i.e.*, their pattern of racketeering activity. This defendant is liable under § 1962 of RICO because it:

(i) Knowingly aided and abetted the BCCI criminal enterprise or the association-in-fact enterprise in

committing the pattern of racketeering activity specified herein;

(ii) Conspired with the BCCI criminal enterprise or the association-in-fact enterprise and the other defendants to commit the pattern of racketeering activity specified herein; and

(iii) By the pattern of racketeering activity complained of herein, it conducted or participated, directly or indirectly, in the conduct of the affairs of the BCCI enterprise or the association-in-fact enterprise.

30. The individual defendants listed below are all United States citizens and residents who held the positions indicated with First American and CCHA during the relevant time period:

INDIVIDUAL DEFENDANT	FIRST AMERICAN CORP.	FIRST AMERICAN BANK SHARES INC.	CREDIT & COMMERCE HOLDINGS/ INVESTMENT
Clark M. Clifford	Chairman of Board	Chairman of Board	Chairman of Board
Robert Altman	President Director	—	Director
A. Vincent Scoffone	Treasurer Director	Sr. V.P., Treasurer, Director	Director
Jack Beddow		President, CEO, Director	Director
Paul G. Adams, III		EVP, CFO, Director	Director

Each of these individuals actively and knowingly participated in the pattern of racketeering activity complained of by, *inter alia*, assisting BCCI in illegally infiltrating the United States banking industry, covering up and concealing the ongoing operation of the conspiracy and by causing or permitting First American Bank to make loans to prominent political figures on very generous terms to further BCCI's political influence in the United States. Defendants Clifford and Altman oversaw all of the BCCI Banks' activities in the United States, including their secret and illegal infiltration of the United States banking industry, and continuously misrepresented the relationship between BCCI and First American to federal and state bank regulators and other government agencies. During 1978-1990, Clifford traveled to London approximately once a month to meet with Abedi and Naqvi and receive instruction from them regarding BCCI's operations in the United States and up to 1988 Abedi came to New York or Washington, D.C., once a month to meet with Clifford (and often Altman) for the same purpose. Once per quarter, defendants Clifford and Altman travelled to London or other locations to meet with defendants Abedi, Naqvi and other top BCCI officers and operators to receive instruction as to how the BCCI Banks in the United States (including First American) were to be operated and how the conspiracy and racketeering enterprise was to be continued. These defendants are liable under § 1962 of RICO because they:

(i) Knowingly aided and abetted the BCCI criminal enterprise or the association-in-fact enterprise in committing the pattern of racketeering activity specified herein;

(ii) Conspired with the BCCI criminal enterprise or the association-in-fact enterprise and the other defendants to commit the pattern of racketeering activity specified herein;

(iii) Used or invested income which they received from their participation in the pattern of racketeering activity complained of to assist in the operation of the BCCI criminal enterprise or the association-in-fact enterprise;

(iv) Through the pattern of racketeering activity complained of herein, acting directly or indirectly they acquired or maintained an interest in the BCCI criminal enterprise or the association-in-fact enterprise; and

(v) By the pattern of racketeering activity complained of herein, they conducted or participated, directly or indirectly, in the conduct of the affairs of the BCCI enterprise or the association-in-fact enterprise.

31. (a) Defendant T. Bertram (Bert) Lance ("Lance") is a United States citizen and resident who played an active and knowing role in the pattern of racketeering activity complained of. In 1975, Lance became the President and CEO of the National Bank of Georgia ("NBG") and shortly thereafter obtained ownership control of NBG, the largest bank in Georgia. In 1976, Lance took a position in Washington, D.C., with the federal government, from which he "resigned" in 1977 and, as a result of his prior misconduct while he controlled NBG, was barred for the rest of his life from acting as an employee, officer, or director of or directly or indirectly participating in the affairs of a federally-insured bank and fined $50,000. Upon these revelations, Lance's stock

in NBG fell sharply to a value less than the amount of loans he had secured based on that stock, placing Lance in a severe personal financial crisis. In 1977, however, Lance sold his NBG stock to BCCI (with Pharaon acting as its strawman/agent) for a price far in excess of its market value, thus partially bailing Lance out of his financial predicament. BCCI also hired Lance as its "consultant" at a very large annual fee and arranged to repay Lance's $3.5 million debt to the First National Bank of Chicago in return for his help in overseeing BCCI's control of NBG and assisting BCCI to gain control of First American. Bank of America executive Carlson, who was BankAmerica's representative on BCCI's Board of Directors and/or oversaw its investment in BCCI, then became president of NBG in order to protect BCCI's investments and carry out its instructions so the conspiracy could continue. In 1977, with Lance's and Clifford's assistance, BCCI, acting through various nominees and agents, including Adham, Sheikh al-Nahayan's son, Abdullah Darwaish ("Darwaish") and al-Fulaij, began to buy the shares of First American Bankshares and by February, 1988, BCCI owned 20% of those shares. When the illegal conduct in acting as an undisclosed group was discovered by the Securities and Exchange Commission ("SEC"), First American sued BCCI and its nominees to halt the takeover attempt. BCCI also learned that, due to its structure, location and methods of operation, United States banking authorities would not permit it to acquire First American. The SEC suit was later resolved via a consent decree and the First American suit by a settlement involving the supposed purchase of First American by clients of BCCI, which purchase was, in fact, made by

BCCI itself acting through agents and strawmen, as detailed herein. This defendant is liable under § 1962 of RICO because he:

(i) Knowingly aided and abetted the BCCI criminal enterprise or the association-in-fact enterprise in committing the pattern of racketeering activity specified herein;

(ii) Conspired with the BCCI criminal enterprise or the association-in-fact enterprise and the other defendants to commit the pattern of racketeering activity specified herein; and

(iii) By the pattern of racketeering activity complained of herein, he conducted or participated, directly or indirectly, in the conduct of the affairs of the BCCI enterprise or the association-in-fact enterprise.

(b) Defendant David L. Paul ("Paul") was the Chairman and CEO of CenTrust Savings Bank, which was secretly controlled by BCCI through Pharaon. Paul operated CenTrust in violation of United States laws regarding savings banks and contrary to all standards of proper banking practices, while wasting and/or looting its deposits on his own lavish personal lifestyle and illegal political contributions. Paul was sued for over $30 million for his waste and looting of CenTrust's deposits and has also been fined or assessed a criminal penalty exceeding $3.1 million. This defendant, who has already defaulted in this case, is liable under § 1962 of RICO because he:

(i) Knowingly aided and abetted the BCCI criminal enterprise or the association-in-fact enterprise in

committing the pattern of racketeering activity specified herein;

(ii) Conspired with the BCCI criminal enterprise or the association-in-fact enterprise and the other defendants to commit the pattern of racketeering activity specified herein;

(iii) By the pattern of racketeering activity complained of herein, he conducted or participated, directly or indirectly, in the conduct of the affairs of the BCCI enterprise or the association-in-fact enterprise.

32. (a) Defendant Clifford & Warnke is a Washington, D.C.-based partnership and law firm. Defendants Clifford and Altman are partners in Clifford & Warnke. In addition, Clifford and Altman were the managing partners and agents of Clifford & Warnke and were, at all times material hereto, in charge of the BCCI/First American accounts and acted in part to retain and service those accounts. Clifford & Warnke, acting through its partners and employees, served as counsel to the BCCI Banks, its nominees and the First American Banks for many years at the same time and while Clifford and Altman were on the First American Board of Directors and running that bank, in a serious conflict of interest. Clifford and Altman were also, in fact, secret agents for and co-conspirators with BCCI in obtaining and exercising control of First American and, in this regard, they attended meetings of the BCCI Group in Europe and elsewhere to receive indoctrination and direction to carry out BCCI activities. Clifford & Warnke received over $1 million per year during the 1980's from BCCI alone for protecting its interests in the United States. Clifford & Warnke is a full-service law

firm with considerable expertise in banking and corporate matters and which has provided, *inter alia*, significant legal services to the BCCI Banks, its nominees and First American, including acting as the advisor on BCCI's secret infiltration of the United States banking system via its acquisition of First American, NBG, CenTrust and Independence Bank, assisting them in various false filings with the FRB and other governmental agencies, assisting in formulating public statements on behalf of them and representing them in regulatory matters that permitted the BCCI Banks to violate United States law and then cover it up. Clifford & Warnke also orchestrated the defense of the federal criminal money-laundering charges against BCCI and certain of its employees in Florida and helped to arrange the disposition of the charges in a fashion that arguably barred all later criminal charges against BCCI, in part by controlling and disbursing over $30 million in fees to investigators, experts, accountants and lawyers through First American. These defendants are liable under § 1962 of RICO because they:

(i) Knowingly aided and abetted the BCCI criminal enterprise or the association-in-fact enterprise in committing the pattern of racketeering activity specified herein;

(ii) Conspired with the BCCI criminal enterprise or the association-in-fact enterprise to commit the pattern of racketeering activity specified herein;

(iii) Used or invested income which they received from their participation in the pattern of racketeering activity complained of herein to assist in the

operation of the BCCI criminal enterprise or the association-in-fact enterprise and to acquire and/or maintain an interest in the BCCI enterprise; and

(iv) By the pattern of racketeering activity complained of herein, they conducted or participated, directly or indirectly, in the conduct of the affairs of the BCCI enterprise or the association-in-fact enterprise.

(b) Defendants Paul C. Warnke ("Warnke"), John F. Kovin ("Kovin"), David I. Granger ("Granger"), Harold D. Murry, Jr. ("Murry"), John G. Calender ("Calender"), J. Griffin Lesher ("Lesher"), Bryan Jay Yolles ("Yolles"), Robert P. Reznick ("Resnick"), Philip H. Hecht ("Hecht") and James C. Duff ("Duff") are each individuals who are United States citizens and who reside in or around Washington, D.C. During the relevant time period, each of these individuals was a partner in the law firm of Clifford & Warnke and each was held out to the public as a partner thereof and, thus, received and benefited from income from the pattern of racketeering activity complained of herein. In late 1991, after exposure of the BCCI scandal and after this lawsuit was first filed, Clifford & Warnke dissolved as a partnership. That dissolution was undertaken by these individuals in an effort to avoid their legal responsibility under RICO and applicable partnership law for the liability of defendants Clifford and Altman and Clifford & Warnke as alleged herein. As partners of defendants Clifford and Altman and Clifford & Warnke, each of these defendants is liable, as a matter of law, for the wrongdoing complained of herein. In addition, in their capacities as Clifford & Warnke partners, several of these defendants actively and knowingly

assisted the BCCI criminal enterprise in committing the pattern of racketeering activity complained of herein.

33. Defendants BankAmerica Corp. ("BankAmerica") and its subsidiary, Bank America NT&SA ("the Bank") (collectively "Bank of America") are a bank holding company and a bank, respectively. Defendant BankAmerica is a bank holding company organized under the laws of Delaware. The company's wholly-owned subsidiary, Bank of America NT&SA, accounts for substantially all of the company's consolidated assets and net income. BankAmerica and the Bank maintain headquarters in San Francisco and Los Angeles, California. The company's non-bank subsidiaries provide investment, financial, stock transfer and other related corporate agency services, credit life and disability insurance, mortgage banking services and industrial loan services. With headquarters in San Francisco and Los Angeles, BankAmerica is engaged in general commercial banking and also offers international banking services through offices in San Francisco, Los Angeles and elsewhere. In 1972, BankAmerica was a co-founder of BCCI, obtaining a 25% interest for $500,000 (later increased to 30%). In addition to owning 25% of BCCI itself, BankAmerica loaned millions to others over the years to permit them to buy over 40% of BCCI's stock, thus controlling over 60% of shares. BankAmerica placed a director on the BCCI Board, its employee and agent, Al Rice, who served as a BCCI director until BankAmerica purportedly "sold" its interest in 1980. As a director of BCCI, Rice was aware of the pattern of racketeering activity complained of herein. Roy Carlson ("Carlson") was also a Bank of America employee and agent who oversaw its investment in BCCI

and became president of the NBG in 1977 or 1978 when BCCI secretly and illegally obtained control of the NBG, thus assisting in the operation of the BCCI Banks' criminal enterprise in the United States. From 1972 until 1980, when it purportedly "sold" its interest in BCCI, BankAmerica was a controlling person of BCCI and was in a position to and did influence and control and direct its activities. However, BankAmerica's purported "sale" of its interest in BCCI in 1980 was not a real sale to an independent party. In fact, BankAmerica's interest in BCCI was purportedly transferred to ICIC, an entity which was closely related to and/or controlled by BCCI, in a non-arm's length transaction whereby BankAmerica "loaned" the money to ICIC to enable it to purchase its interest's in BCCI. Thus, BankAmerica invested about $5 million in BCCI and "sold" its interest in the Bank in 1978-1980, recognizing a $27+ million profit, on a non-arm's length transaction. The huge profit BankAmerica made on its investment in BCCI in a short time was a direct result of BCCI's illegal activities and was intended to compensate BankAmerica for purportedly removing itself from ownership of BCCI and to make sure BankAmerica would not reveal what it knew about BCCI's past and ongoing racketeering activities. During the 1970's, BankAmerica provided important executive talent to BCCI – including defendants Lamarche, van Oenen and Twitchin – who were employed by it as executives and later directors. In 1976, BankAmerica also made its employee, Robert Frick, the full-time Chief Administrative Officer of BCCI, a job he performed in part while working out of BankAmerica's offices. BankAmerica

additionally controlled BCCI by imposing stringent capital and budget rations on it and prohibiting it for some years from raising any new capital, which restraints the BCCI Board of Directors – which BankAmerica dominated – enforced. In addition, the former BankAmerica officers who became directors of BCCI acted on BankAmerica's behalf and reported to it. Defendant Twitchin specifically approved all BCCI credits over $5 million and watched BCCI's risk assets on a daily basis. To help BCCI bribe important Pakistani officials, in 1978, BankAmerica hired Ijaz, the son of General Zia of Pakistan, even though he was completely unqualified for the position. BankAmerica was aware of the illegal conduct of the BCCI Banks from 1972 to 1978 and purportedly sold out its position in 1978 at a profit, but did not disclose any of what it knew or had done or participated in, nor did it withdraw from the conspiracy, even though it knew BCCI was going to continue and indeed expand its racketeering activities, including illegally infiltrating the United States banking system. In fact, one of the reasons that BankAmerica "sold" its interest in BCCI in 1978-1980 was to help BCCI try to take over First American, which could not occur so long as BankAmerica (which was itself a bank holding company) owned part of BCCI. In "selling" its BCCI shares for a $27+ million profit in just six to eight years, BankAmerica was being rewarded in order to advance the overall object of the conspiracy, as it was believed at that time that if BankAmerica was removed as an owner of BCCI it would be possible for BCCI to purchase a large American bank holding company – something it could not do if one of its owners was – as BankAmerica was – already a bank holding company. In

fact, in 1990 – years after BankAmerica supposedly sold off its interest in BCCI – of the seven directors on BCCI's Board of Directors, three were former executives of BankAmerica, *i.e.*, defendants Lamarche, van Oenen and Twitchin. Subsequent to 1978, BankAmerica has continued to conspire with and aid and abet BCCI by various means, in addition to concealing BCCI's wrongdoing, by serving as a conduit for BCCI to illegally accept deposits in the United States, and as a depository for huge amounts of BCCI funds – over $175 million in 1991 – and by facilitating other transactions and currency transfers with it, including guaranteeing BCCI's letters of credit for large fees and aiding it in making monetary transfers which assisted defendant Pharaon and BCCI to conceal BCCI's illegal control and ownership of Independence Bank. BankAmerica's "sale" of its BCCI stock in 1978 was not a real sale because the "sale" was to ICIC, a BCCI-controlled entity located in Grand Cayman, and BankAmerica provided the money to ICIC to make the "purchase." After this purported sale, BankAmerica was compensated by BCCI for its continuing interest in BCCI engaging in, on a daily basis, the overnight funds market to borrow up to $1 billion daily, paying premium interest rates for the money and then depositing the money with BankAmerica on terms profitable to BankAmerica. This defendant is liable under § 1962 of RICO because it:

(i) Knowingly aided and abetted the BCCI criminal enterprise or the association-in-fact enterprise in committing the pattern of racketeering activity specified herein;

(ii) Conspired with the BCCI criminal enterprise or the association-in-fact enterprise and the

other defendants to commit the pattern of racketeering activity specified herein;

(iii) Used or invested income which it received from its participation in the pattern of racketeering activity complained of herein to assist in the operation of the BCCI criminal enterprise or the association-in-fact enterprise;

(iv) Through the pattern of racketeering activity complained of herein, acting directly or indirectly, it acquired or maintained an interest in the BCCI criminal enterprise or the association-in-fact enterprise; and

(v) By the pattern of racketeering activity complained of herein, it conducted or participated, directly or indirectly, in the conduct of the affairs of the BCCI enterprise or the association-in-fact enterprise.

34. Defendant Independence Bank is a bank with over $670 million in assets located in Encino, California, which was illegally owned and controlled by BCCI through secret arrangements with defendant Pharaon and was used by them as an instrumentality to further the conspiracy and pattern of racketeering activity complained of. Defendant Fulvio Dobrich ("Dobrich"), a United States citizen and a resident of California, was the CEO of Independence Bank and defendant Kemal Shoaib ("Shoaib"), a former BCCI executive, was the Chairman of the Board of Directors of Independence Bank, who both actively and knowingly participated in the conspiracy and pattern of racketeering activity complained of herein. Independence Bank, Dobrich and Shoaib helped

fund the ongoing operation of the BCCI "Ponzi operation" by a wire transfer scheme whereby when Independence Bank would wire money to a BCCI Bank on behalf of a customer, they would increase the amount transferred by altering the documentation for the transaction, thus "upstreaming" money to BCCI. Also, these defendants filed false reports with federal regulators after BCCI purchased control of Independence Bank via Pharaon, which reports concealed BCCI's ownership and control of Independence Bank. These defendants are liable under § 1962 of RICO because they:

(i) Knowingly aided and abetted the BCCI criminal enterprise or the association-in-fact enterprise in committing the pattern of racketeering activity specified herein;

(ii) Conspired with the BCCI criminal enterprise or the association-in-fact enterprise and the other defendants to commit the pattern of racketeering activity specified herein;

(iii) Used or invested income which they received from their participation in the pattern of racketeering activity complained of herein to assist in the operation of the association-in-fact enterprise; and

(iv) By the pattern of racketeering activity complained of herein, they conducted or participated, directly or indirectly, in the conduct of the affairs of the BCCI enterprise or the association-in-fact enterprise.

35. Defendant Michael Goland ("Goland") is an individual (and United States citizen and a resident of California) who knowingly helped BCCI obtain control of

Viking Savings via a large loan from Independence and then used such control to loot its assets by making large and illegal political contributions. In 1989, due to defendant Goland's waste and abuse of its assets, Viking Savings became insolvent and failed. Goland was convicted of violations of federal law in connection with the Viking Savings takeover and with election fraud for making illegal political contributions using its assets. This defendant is liable under § 1962 of RICO because he:

(i) Knowingly aided and abetted the BCCI criminal enterprise or the association-in-fact enterprise in committing the pattern of racketeering activity specified herein;

(ii) Conspired with the BCCI criminal enterprise or the association-in-fact enterprise and the other defendants to commit the pattern of racketeering activity specified herein; and

(iii) By the pattern of racketeering activity complained of herein, he conducted or participated, directly or indirectly, in the conduct of the affairs of the BCCI enterprise or the association-in-fact enterprise.

36. (a) Defendant Hill & Knowlton, Inc. ("Hill & Knowlton") is an international public relations firm with offices located in seven major United States cities, including Los Angeles and San Francisco, California. Hill & Knowlton played an active and knowing role in the conspiracy and pattern of racketeering complained of herein by helping to circulate or publicize many of the false statements (including false financial statements) of BCCI by mail or wire transmissions. Hill & Knowlton knew that BCCI was engaged in "sleazy" activities and several

top Hill & Knowlton officials refused to help BCCI disseminate false and misleading information; however, they were overruled by superiors because BCCI had promised Hill & Knowlton fees of at least $50,000 per month to help publicize and circulate the false information necessary to conceal and continue BCCI's illegal infiltration of the United States banking industry, its reckless, improper and illegal business activities and its gravely impaired financial condition. When *Regardie's* magazine published an article in the Spring of 1990 strongly indicating that BCCI illegally controlled First American, Hill & Knowlton cooperated in formulating a "disinformation" campaign to discredit the article and help delay any investigation of BCCI's acquisition of First American and by circulating, by mail and interstate wire communications, what they knew was a false and misleading denial of the truthfulness of the article by way of a purported "fact sheet" and otherwise. This defendant is liable under § 1962 of RICO because it:

(i) Knowingly aided and abetted the BCCI criminal enterprise or the association-in-fact enterprise in committing the pattern of racketeering activity specified herein;

(ii) Conspired with the BCCI criminal enterprise or the association-in-fact enterprise and the other defendants to commit the pattern of racketeering activity specified herein;

(iii) Used or invested income it received from its participation in the pattern of racketeering activity complained of herein to assist in the operation of the association-in-fact enterprise; and

(iv) By the pattern of racketeering activity complained of herein, it conducted or participated, directly or indirectly, in the conduct of the affairs of the BCCI enterprise or the association-in-fact enterprise.

(b) Morrison & Foerster and Rosenblum Parish & Bacigalupi are law firms formed under California law and located in Los Angeles and San Francisco, respectively. Henry M. Fields ("Fields") and Lachlan Foster ("Foster") are partners in Morrison & Foerster. Victor Bacigalupi ("Bacigalupi") is a partner in Rosenblum Parish & Bacigalupi. Each one played an important role in the operation of the BCCI criminal enterprise in the United States, including its illegal infiltration of the U.S. banking system through its acquisition of Independence Bank, using its nominee (or strawman) Pharaon. This acquisition is detailed in ¶¶243-282 hereof. In February, 1984, BCCI's New York agency office retained Morrison & Foerster to help BCCI find a bank located in California to acquire. Thereafter, BCCI's San Francisco agency office located Independence Bank as a potential acquisition target for BCCI. Fields met with BCCI officials and Bacigalupi, who was also acting as counsel for BCCI in San Francisco. A decision was made that Independence Bank would be acquired, that Bacigalupi and his law firm would represent BCCI in the transaction while Fields and his law firm would represent Pharaon, the purported purchaser of the bank. Thereafter, they worked together to bring about the acquisition of Independence Bank by BCCI acting through Pharaon. In connection with and pursuant to this transaction, Morrison & Foerster repeatedly communicated not with Pharaon but, rather, with BCCI officers and officials located here in the United

States, including defendant Shoaib, who was then a very senior BCCI executive. BCCI representatives – not Pharaon – utilizing these two law firms, negotiated the terms of the acquisition. In April, 1985, it was agreed by them that Pharaon would buy Independence Bank for $23 million; however, it was known to each of them that Pharaon was in fact acting as a "front" or strawman for BCCI and that Pharaon would own few, if any, of the shares of Independence Bank stock. Thereafter, Morrison & Foerster and Rosenblum Parish & Bacigalupi cooperated to create and file false documentation with regulators with respect to this transaction to make it appear that BCCI was not involved in the acquisition or ownership of Independence Bank, including the preparation and filing of false reports with United States banking authorities. After the acquisition of Independence Bank, Foster joined the Independence Bank Board of Directors along with defendant Shoaib. Thereafter, they cooperated in helping BCCI operate and control Independence Bank and in concealing its illegal ownership of that bank from federal regulatory authorities in this country, which included the filing of false reports with the federal banking authorities on an ongoing basis.

[Complaint Excerpted Here]

E. Fraudulent Scheme to Steal/Waste and Risk Depositors' Monies and Deceive Depositors and Regulators

283. The defendants made repeated false and fraudulent representations and promises as to (i) the identity of the owners of the BCCI Group and the degree of their financial involvement in the BCCI Group; (ii) the amount

of shareholder capital at risk in the BCCI Group; (iii) the financial condition, net worth and capital of the member entities of BCCI Group; and (iv) the ability of the BCCI Group to repay depositors, while pursuing a pattern of racketeering activity that damaged the class members in their business or property.

284. By means of the pattern of racketeering activity complained of herein, defendants obtained deposits of over $20 billion from diverse persons, including United States citizens living in the United States and abroad, foreign citizens residing in the United States, banks based in the United States and thousands of other persons throughout the world.

285. The essence of the scheme was to start, purchase and control banks and obtain deposits which would then be used for illegal purposes, stolen, diverted or used to benefit BCCI insiders, their relatives and their business associates, in part by convincing depositors, regulators and other banking and financial institutions, by means of false representations and false information, that BCCI was a safe financial repository and institution for funds, and thereby defendants acted to persuade depositors and banking and other financial institutions to provide the BCCI Group banks with deposits and credit. Upon obtaining the billions in deposits, the defendants could then steal the money or divert it by unauthorized transfers and "loans" which would never be repaid.

286. Foremost among the originators of the scheme was defendant Abedi, a Pakistani banker who had worked as chief executive of a number of Pakistani banks, until the nationalization of the banks in Pakistan in 1972.

Defendants Abedi and Naqvi, acting with and assisted by BankAmerica and others, established the BCCI Banks, as well as related corporate and investment entities, in more than seventy countries around the world. BCCI was the leading bank, established in 1972 in Luxembourg, Abu Dhabi and England.

287. Then ICIC Overseas was established in Grand Cayman as a bank. ICIC Overseas was used to conceal BCCI Group liabilities and to create false assets for the BCCI Group. ICIC Holdings was established and was used to conceal stolen monies. ICIC Overseas and ICIC Holdings, together with a series of related corporate and non-corporate entities, were collectively known as the "ICIC Group."

288. Defendant Abedi was in charge of the BCCI Group and the ICIC Group. Defendant Naqvi rose to become the second in command. In the late 1980's, after defendant Abedi became incapacitated, defendant Naqvi took charge of the scheme and of the BCCI Group and ICIC Group. Defendants Abedi and Naqvi, with the assistance of the other defendants, created the false representations and promises to advance their scheme and to pursue the pattern of racketeering activities.

289. In the course of the scheme and in furtherance thereof, many wrongful acts were committed in the United States and elsewhere. Examples of those follow:

(a) First, to create the false impression that the BCCI Group was a repository and a financial institution with which depositors and other creditors could safely do business, the schemers employed the ruling families of a number of Middle Eastern states and other purportedly

wealthy businessmen as nominal shareholders of the entities comprising the BCCI Group, in particular, of BCCI Holdings. The schemers falsely pretended, represented and promised that the nominees owned and financially would stand behind the BCCI Group; however, by the terms of the secret contractual agreements, the nominees were insulated from any economic loss suffered by the BCCI Group;

(b) Among the nominees were Ghaith R. Pharaon, Sheikh Kamal Adham, Abdul Khalil, Sayed Jawhary (a/k/a El Sayed El Gohari) and Faisal Saud al-Fulaij, all of whom assisted the defendants by knowingly permitting the BCCI Group management to trade on their reputations for wealth by fraudulently using their names as shareholders in BCCI Holdings, and, thus, as owners of the BCCI Group. Defendants further advanced their scheme to defraud by causing documents to be filed with U.S. banking authorities that gave false information concerning the identities of the true owners of the BCCI Group, including BCCI Holdings;

(c) In addition, defendants Pharaon, Adham, Khalil, Jawhary and al-Fulaij permitted defendants Abedi and Naqvi, the BCCI Group, including, but not limited to, BCCI S.A., BCCI Overseas and BCCI Holdings, and the ICIC Group to create the false appearance that the BCCI Group and the ICIC Group loaned them money. This resulted in the creation of false assets for the BCCI Group in the form of loans receivable which were not genuine. The false and fraudulent impressions were further enhanced by false confirmations of indebtedness to the BCCI Group which Pharaon, Adham, Khalil, Jawhary and

al-Fulaij caused and permitted to be sent to auditors of the BCCI Group;

(d) The creation of false assets and the false assertions of ownership of the stock of BCCI Holdings created the false and fraudulent impressions that Pharaon, Adham, Khalil, Jawhary and al-Fulaij were economically involved in BCCI Holdings as shareholders, that their money was at risk in the bank and that they would financially stand behind the BCCI Group if necessary;

(e) Second, defendants established separate subsidiaries of BCCI Holdings in a number of countries, including Luxembourg and the Cayman Islands, which have strict laws against release of banking information. By so doing, defendants guaranteed that there would be no comprehensive regulation on a consolidated basis by any single regulator of the BCCI Group. This permitted the inter-bank transfer of assets and liabilities to be conducted in a manner that could and did conceal the true economic position of the BCCI Group;

(f) Third, defendants authorized and caused to be authorized the payments of bribes and kickbacks to agents of other banking and financial institutions. By virtue of that practice, defendants attempted to avoid and did avoid scrutiny by other banking and financial institutions of the capital structure and financial viability of the BCCI Group. In 1986 and 1987, to obtain deposits from and a banking relationship with the Central Reserve Bank of Peru, defendants Abedi and Naqvi authorized and directed employees of the BCCI Group to open a bank account in a Swiss bank in Panama to transmit bribes and kickbacks in the amount of a percentage of the deposits

maintained by the Central Reserve Bank of Peru to the two senior officers of that bank. The total of such payments was approximately $3 million;

(g) Fourth, the defendants systematically engaged in a program known as the External Marketing program in the United States during the period from 1987 to 1990. Pursuant to that program, defendants and agents of defendants actively solicited bank deposits and/or lending relationships from numerous persons in San Francisco, Los Angeles and elsewhere in the United States. Accounts and deposits were solicited and obtained through false representations that the BCCI Group was a safe and viable banking institution. Although BCCI's agencies in the United States could not legally accept deposits from United States citizens, they often did, frequently circumventing this prohibition by having people deposit money in banks like BankAmerica and Security Pacific, which would then cooperate by transferring the deposit to a BCCI office overseas. As part of this scheme, defendants and their agents also represented that said persons could open, at BCCI agency located in San Francisco and Los Angeles, banking accounts that would be booked at the overseas branches of the BCCI Group, including, but not limited to, branches of BCCI Overseas in Lahore, Pakistan and Dhaka, Bangladesh. By means of these solicitations and with the knowledge that the representations made concerning the financial condition and the capital and net worth of the banking institutions were materially false, defendants obtained property in the form of deposits at the BCCI agencies in the United States on behalf of the BCCI Group from American citizens and residents; and

(h) Fifth, the defendants systematically filed and caused to be filed with the superintendent of various states, including California, provided and represented as true to correspondent banks, and otherwise published financial statements which defendants knew to contain false and fraudulent representations materially overstating and falsifying the BCCI Group's capital, net worth and ability to repay depositors.

290. The BCCI Banks were in regular contact with money managers and similar members of the business community, in part through the activities of various officers and directors of the BCCI Banks, and periodically provided information to government regulators purportedly to inform them of the current status and prospects of the BCCI Banks. By these contacts, the defendants consistently advised, stated and confirmed to regulators that the BCCI Banks had huge assets and were successful. There was no reasonable basis for these statements when made and the true adverse facts about BCCI Banks, their business, management, diversification and expansion program, markets, financial performance and condition and future business prospects, which were known to or recklessly disregarded by defendants, contradicted the forecasts as made. These statements were false and misleading when made and operated to make possible the gathering of deposits and to avoid a much earlier regulatory seizure of the BCCI Banks.

291. From at least January 1, 1972, defendants, individually and in concert, directly and indirectly, engaged and participated in or aided and abetted a continuous course of conduct and conspiracy to inflate the publicly reported assets and net worth of the BCCI Banks and to

conceal adverse material information about the businesses, finances, financial condition and future business prospects of the BCCI Banks, as specified herein. Defendants employed devices, schemes and artifices to defraud and engaged in acts, practices and a course of conduct as herein alleged in an effort to obtain billions in deposits and to prevent a regulatory seizure of the Banks, which included the making of or participation in the making of untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about the BCCI Banks, their finances and business condition, in the light of the circumstances under which they were made, not misleading, and engaged in transactions, practices and courses of conduct which operated as a fraud and deceit via mail and wire fraud upon the depositors and regulators during the relevant period. Moreover, throughout the relevant period, defendants, as part of their ongoing effort to continue the illusion of the BCCI Banks' management's expertise and prudence and of the BCCI Banks achieving substantial growth, issued public statements, releases and reports which were materially false and misleading because they failed to disclose material adverse information about the management, businesses, operations, financial condition and future business prospects of the BCCI Banks, including the following:

(a) That the BCCI Banks had secretly acquired control of the First American Bank, National Bank of Georgia, CenTrust and Independence Bank of Encino pursuant to a series of misrepresentations and had failed to disclose material facts to regulators regarding, *inter alia*, its control of these banks;

(b) That, contrary to the Company's statements in its public reports that, *inter alia*, its financial statements had been prepared in conformity with applicable rules and regulations and were a true and fair presentation of the Company's financial position, each of BCCI's publicly disseminated financial statements were false and misleading because each such financial statement was neither prepared in accordance with appropriate accounting principles nor examined by defendants Price Waterhouse and Ernst & Young in accordance with proper auditing procedures and each such financial statement was not prepared pursuant to applicable rules and regulations and did not reflect all adjustments necessary to present truly and fairly the financial position, results of operations and changes in BCCI's financial position for the period or periods presented;

(c) That BCCI was experiencing a serious and worsening cash flow crisis which placed it in danger of violating governmental liquidity requirements and which required it to pay premium interest rates to attract depositors;

(d) That BCCI was facing a major risk and danger in the manner it had deployed its assets and structured its business in a grossly illegal manner, such that due to improper loans and other illegal transactions, its liquidity would be adversely impacted and its solvency severely threatened and the Banks seized;

(e) That BCCI's business was not, in fact, traditional or even commercial banking, but, rather, engaging in an ongoing criminal enterprise and financing the criminal activities of others;

(f) That BCCI was disbursing hundreds of millions to BCCI insiders, their friends and/or business associates without doing any credit investigation, without requiring signed promissory notes or loan agreements and without obtaining verification or perfecting any security for those loans;

(g) That in order to conceal BCCI's ever-increasing problem loans and the dangers posed to its financial condition thereby and to permit BCCI to continue to report loan and asset growth, BCCI failed to properly classify loans as problem loans, thereby avoiding establishing material amounts of required loan loss reserves, which were required in order to fairly and accurately present the BCCI Banks' financial condition;

(h) That BCCI was providing large amounts of monies under the guise of "loans" to borrowers who were not creditworthy and/or making "loans" secured by inadequate collateral, thus artificially boosting revenues/profits via the recognition of up-front loan fees and greatly increasing the risk of substantial losses;

(i) That BCCI was having difficulty in attracting new accounts or maintaining existing deposits at levels necessary to sustain its liquidity and that BCCI was increasingly being forced to obtain brokered deposits and to pay premium interest rates and other charges to attract and retain the deposits it was obtaining, which was adversely affecting BCCI's liquidity;

(j) That BCCI was suffering from significant management failures, shortcomings and frauds at the highest levels, that regulatory authorities had criticized the practices and competency of the BCCI Banks' top

management, that BCCI was unable to properly manage and control its rapid growth, and that far-flung operations had been unable to attract sufficient deposits to adequately fund operations or make sufficiently profitable loans to generate adequate internal cash flow and operating profits to support its growing operations;

(k) That BCCI was paying millions to fronts, strawmen or nominees to purchase control of American banks, in violation of federal and state law;

(l) That BCCI had overstated the value of its portfolio of investments and marketable securities as an asset on its balance sheet and that the value of BCCI's portfolio of investments and marketable securities was not properly, accurately or timely recorded on BCCI's balance sheet as represented by BCCI;

(m) That BCCI had engaged in a gross overconcentration of its assets by (i) making loans of over $700 million to a single related group of Pakistani companies (*i.e.*, the Gulf Group); (ii) making over $3.3 billion in loans (compared to stated capital of between $1 and 1.5 billion) to just 22 customers; and (iii) making a huge amount of loans (exceeding $5 billion) in the Middle East, an undue concentration of loans.

(n) That BCCI had made over $148 million in loans to Faisal Saud al-Fulaij for which there were *no* loan agreements, no promissory notes and on which no interest had been paid for years;

(o) That BCCI had made over $150 million in loans to A.R. Khalil for which there were *no* loan

agreements, no promissory notes and on which no interest had been paid for years;

(p) That BCCI had used (diverted and misappropriated) over $170 million in deposits from Faisal Islamic Bank of Egypt to cover up the lack of interest payments on several large loans, cover up certain loans made by BCCI to facilitate its takeover of First American Bank and to "recreate" a missing $62 million deposit;

(q) That BCCI had taken over $580 million in deposits and not recorded them, using the monies instead to cover up losses that it had suffered on phony or bad loans, thus materially understating the Bank's liabilities;

(r) That BCCI's consolidated financial statements for many years – at least since 1975:

(i) overstated income, assets, capital and net worth for each of those periods as a result of BCCI's failure to provide adequate reserves impaired loans;

(ii) overstated income as a result of interest income being improperly accrued on nonperforming loans and loan origination fees being improperly recognized on loans which were uncreditworthy and did not meet prudent lending standards;

(iii) overstated income by the improper recognition of interest; and

(iv) overstated assets by material amounts due to, among other things, use of exaggerated and inflated appraisals;

(s) That BCCI lacked adequate internal financial and accounting controls and indeed structured its

operations so as to evade or avoid the implementation of controls necessary to ensure the integrity of its assets and its resulting financial statements such that all assets, revenue and income from transactions recorded on BCCI's books were reasonably expected to be realized and were not, in fact, fictitious or illusory;

(t) That in order to avoid recognizing losses on bad loans, BCCI was improperly rolling over loans which were in default, was refinancing bad or defaulting loans and was advancing funds to enable borrowers to pay interest on loans;

(u) That as a result of BCCI's serious and worsening cash flow problem and losses from operations, the BCCI Banks' management was engaging in an increasing number of highly speculative and risky transactions and practices in an attempt to achieve large short-term profits and raise cash, including reckless commodity and securities transactions;

(v) That regulatory officials had warned BCCI that the operating practices identified above were extremely dangerous, that its liquidity was declining at a dangerous rate, that BCCI was in danger of violating applicable requirements, that BCCI's lending and operating controls, financial condition and loan loss position was much worse than its audited and other public financial statements indicated and that BCCI's reporting of assets and income was materially false;

(w) That the BCCI Banks were repeatedly falsifying documents to disguise the true nature of numerous investments, acquisitions, partnerships and joint ventures to make them appear to be loans and had

repeatedly lied to regulators about the true nature of these transactions;

(x) That in order to attempt to conceal or cover up the BCCI Banks' illegal, imprudent, fraudulent, unsafe and unsound policies, practices and operations, a massive and ongoing program of document fraud was being carried out by a "Special Duties Department," including destroying, damaging or incinerating documents, creating false documents to conceal wrongdoing and forging the signatures of the BCCI Banks corporate directors and officers and others on many corporate forms, reports and other legal documents;

(y) That in order to permit the BCCI Banks to operate in an unsafe, unsound and illegal manner, it had undertaken a massive program to purchase political influence by making or causing to be made huge political contributions, many of them illegally reimbursed or paid for by the BCCI Banks and by bestowing other financial favors on important officials and in part through loans to them from First American, which were in amounts and/or on terms not justified by the credit of such individuals;

(z) That the BCCI Banks' 1988 "plea bargain" with the Department of Justice in fact resulted from improper political pressure which was intended to give the BCCI Banks the ability to operate illegally in the United States in an unsafe and unsound manner with virtual immunity from federal regulators;

(aa) That the BCCI Banks overstated the value of its portfolio of investments and marketable securities as assets on its balance sheets and that the value of the BCCI Banks' portfolio of investments and marketable

securities was not properly, accurately or timely recorded on the BCCI Banks' balance sheets at the lower of cost or market value;

(ab) That the BCCI Banks' loan portfolio included significant and material amounts of non-performing loans which were not timely written off by the BCCI Banks;

(ac) That as a result of the BCCI Banks' serious and worsening cash flow problems and losses from operations, the BCCI Banks' management was engaging in an increasing number of illegal, highly speculative and risky transactions and practices in an attempt to create large short-term profits, increase its reported assets and raise cash by obtaining deposits;

(ad) That in order to meet production or performance quotas imposed on loan officers by the BCCI Banks' top management and to accommodate the personal wishes of BCCI's controlling shareholders, and top officers and directors, the BCCI Banks were making large amounts of sub-standard loans to borrowers who were not creditworthy, even without signed notes and/or loans secured by inadequate collateral, thus artificially boosting loan volume and earnings via the recognition of upfront loan fees and greatly increasing the risk of substantial loan losses;

(ae) That in order to conceal the growing amount of problem or non-performing loans and the dangers they posed to the BCCI Banks and in order to permit the BCCI Banks to continue to report large capital and apparent liquidity and growth, the BCCI Banks failed to properly classify loans as problem or non-performing

loans, thereby avoiding establishing material amounts of reserves for possible loan losses which were required in order to fairly and accurately present the BCCI Banks' financial condition, by granting unjustified maturity extensions, rate concessions and loan rollovers (including advancing unpaid interest) which were not in accord with good banking practices and were not justified by the creditworthiness, current financial condition and loan performances of the borrowers;

(af) That the defendants had authorized, caused or permitted the BCCI Banks to operate with dangerous lending procedures lacking adequate overall control and coordination necessary to assure proper loan quality, adherence to proper lending standards and documentation procedures and to permit the prompt identification of, or avoidance of, undue concentration of loans in high-risk areas or industries;

(ag) That the defendants had authorized, caused or permitted the BCCI Banks to engage in an overly aggressive commercial lending program by which the BCCI Banks made a significant volume of commercial loans which defendants knew were not adequately documented or were of a substantially higher risk character than was proper for a commercial bank, and, thus, would likely result in a major impairment of the BCCI Banks' capital and liquidity and in losses in the future;

(ah) That the defendants had authorized, caused or permitted the BCCI Banks, without an adequate feasibility evaluation and without adequate safeguards, to purchase interests in or to increase its

investments in commercial projects at times when defendants knew or recklessly disregarded facts demonstrating that these projects were not feasible, had developed or would develop severe cash flow problems, thus lowering their realizable net value;

(ai) That the defendants had authorized, caused or permitted huge commercial loans to be made with inadequate and unreliable financial information relative to the creditworthiness of the borrower and guarantor and the borrower's source of repayment and/or, in many cases, without even obtaining signed promissory notes;

(aj) That the defendants had authorized, caused or permitted the BCCI Banks to invest in ventures without reasonable investigation and on the basis of inadequate or non-existent appraisals and/or contrary to prudent investment practices;

(ak) That the defendants had authorized, caused or permitted the BCCI Banks to operate and report their financial information in a manner which was contrary to applicable regulations and which concealed and minimized the size and true severity of the financial problems of the BCCI Banks;

(al) That the supposed "capital infusion" into BCCI by Abu Dhabi in April, 1990, was, in fact, part of a cover-up to which key defendants agreed, to conceal that BCCI had made huge loans which would not be repaid to several insiders who "owned" BCCI and had abused their positions of control by siphoning off millions in bank funds for themselves and their families, friends and business associates;

(am) That the supposedly successful "rights offerings" to BCCI shareholders in 1987 and 1989 to raise capital for BCCI were sham transactions since BCCI provided from its own funds virtually all the monies to buy the rights offerings – a completely circular transaction, in which BCCI provided the money that was supposed to be new capital for the BCCI Banks and the supposed stockholders of BCCI, in fact, did not, in many instances, even know that they had supposedly purchased such rights;

(an) That the BCCI Banks were in constant protracted controversy with various central banks and regulators and were misrepresenting their financial condition and nature of its operations to them; and

(ao) That most of the loans being made by the BCCI Banks were not short-term or self-liquidating but, rather, were long-term – often of indefinite duration and highly illiquid in that there was no identified source of repayment for these loans and their repayment depended upon unique transactions or refinancing by another lender.

292. Among the illegal acts of racketeering of the BCCI Banks, aided and abetted and conspired in by the other defendants, which occurred after 1970, are at least the following:

(a) Committing bank, financial institution and mail and wire fraud in obtaining and then maintaining control of four American banks, *i.e.*, First American, NBG, CenTrust and Independence Bank, through the use of secretly compensated nominees and false statements,

reports and filings with the FRB and other regulatory authorities;

(b) In 1988, through wire and mail fraud, purchasing ("parking") some $35 million in junk bonds issued by CenTrust in order to artificially prop up the financial condition of CenTrust at a time when the regulators were bearing down on it and threatening to close it, which bonds were repurchased from the BCCI Banks and other straw parties by CenTrust at face value shortly after the regulators' inspection of CenTrust was over. This transaction was undertaken deliberately to deceive American banking regulators and help a fraudulently operated savings and loan to stay open longer, which ultimately inflicted great damage on American taxpayers, and constitutes, *inter alia*, financial institution fraud;

(c) Having First American place $74 million in ICIC certificates of deposit in the Cayman Islands to help artificially boost ICIC's capital – an imprudent and highly risky transaction, inconsistent with standards governing the management of a bank subject to United States regulation;

(d) In 1985, via wire and mail fraud and fraud in connection with sale of securities, causing First American to purchase Pharaon's interest in the NBG (which was actually BCCI's interest) at a grossly inflated and unfair price, thus funneling at least $220 million to the BCCI Banks, which monies were utilized by it to help cover up and perpetuate its ongoing fraud;

(e) Paying bribes to top officials of the Peruvian Central Bank in order to get those individuals to cause the government of Peru to place government funds

in the BCCI Banks and in paying a $32 million bribe to the former manager of its investment activities in London in order to prevent him from exposing the ongoing fraud and criminal conduct at the BCCI Banks;

(f) Permitting the BCCI Banks' branches in Florida to engage in financing illegal narcotics transactions and to engage in money laundering transactions on behalf of drug dealers and then, when that activity was discovered by law enforcement officials, using its political influence to obstruct justice and obtain an improper plea bargain agreement which permitted it to pay a paltry fine of $15 million, while securing an agreement from federal law enforcement officials which was grossly overbroad in that it purported to commit the United States to never charge the BCCI Banks or its affiliates "with committing any other federal criminal offenses under investigation or known to the government at the time of the execution of this agreement or relating in any manner to the charges disposed of by the agreement";

(g) Financing illegal international arms shipments through the BCCI Bank branch in Miami, Florida;

(h) Consistently manufacturing false documentation to facilitate inflation of account turnover and concealments of flows of funds involving over 6,500 accounts during a 15-year period, including activities to hide over $600 million in deposits, treating them as unrecorded deposits, thus grossly distorting the Banks' financial statements and making hundreds of millions of dollars of fictitious loans, which in fact were nothing more than transfers of money to BCCI insiders and those

with whom those insiders had incestuous business and other relationships;

(i) Through the BCCI London branches' financing international terrorist activities in part through the accounts of Abu Nidal;

(j) Secreting and/or destroying evidence, including, in June, 1991, taking large amounts of computer data and supporting systems from London to Abu Dhabi in order to conceal the prior course of criminal wrongdoing, and lying and covering up its prior wrongdoing so as to frustrate and delay legal proceedings against and investigation of BCCI, thus avoiding regulatory seizure;

(k) Acting as personal bankers for and engaging in illegal currency transactions and secret transfers of monies on behalf of a number of international criminals, including Noriega, Hussein, Marcos and Khashoggi, and helping Noriega, Hussein and Marcos loot their national treasuries through a series of transactions by which they permitted and assisted those parties to appropriate government monies for their own personal use;

(l) Stealing depositors' monies, including parts of the deposits of residents and citizens of the United States, by permitting BCCI insiders and their friends, relatives and business associates to obtain huge loans that would never be repaid and, in some instances, just taking the money;

(m) Financing illegal drug transactions of Pablo Escobar and Jorge Ochoa, leaders of the Medellin

drug cartel, including transactions involving the illegal transportation of narcotics into the United States;

(n) Assisting through its Miami, Florida, operations, Munther Ismael Bilbeisi (brother of a BCCI regional manager) to smuggle $35 million worth of coffee into the United States and sell it to United States buyers, in part through funds and false documents it made available;

(o) Assisting Noriega in looting the treasury of Panama and stealing its public monies by secretly transferring these funds out of Panama to Noriega's secret bank accounts elsewhere, in part via transfers through First American in the United States;

(p) Money-laundering the proceeds of illegal narcotics activities through its Miami, Florida, offices for which several BCCI operatives were convicted in the United States and BCCI pleaded guilty, paid a $15 million fine and was placed on probation for 5 years;

(q) Making illegal political contributions in the United States, in substantial part through CenTrust's PAC, officers, its top customers and certain of their associates and by misusing the funds of Viking Savings;

(r) Assisting Arif Durrani, a Pakistani weapons dealer, in illegally selling/shipping (smuggling) arms to Iran (for which Durrani has been convicted in the United States and sentenced to 10 years) via letters of credit and common transfers from its Los Angeles, California, operations;

(s) Undertaking to obtain political influence to halt, deflect, or delay any investigation into their

conduct and to prolong their conspiracy by hiring a phalanx of United States lobbyists (often paying them grossly excessive fees because the lobbyists refused to represent a criminal enterprise absent such "premium" payments), making huge and often illegal political contributions in the United States through, *inter alia*, CenTrust and Viking Savings as described above and also Clifford and Altman as well, and by having First American make large loans on very generous terms to political figures in the United States through the First American;

(t) Circulating by mail and wire in the United States BCCI's false and misleading financial statements and false statements by BCCI and other of the co-conspirators that BCCI was not operating illegally in the United States, by controlling First American, CenTrust, NBG and Independence Bank. For each year ending December 31, 1982, 1983, 1984, 1985, 1986, 1987, 1988 and 1989, BCCI filed with the Federal Reserve Board by mail its Form Y-7 and Schedule A thereto which falsely represented that BCCI did not directly or indirectly own, control or hold with power to vote more than 5 percent of the outstanding voting securities of any U.S. bank, and falsely represented that BCCI conducted no business activities in the United States. The Forms Y-7 and Schedule A thereto which BCCI filed on an annual basis during the above-referenced years also contained false financial statements, as well as Price Waterhouse's opinion that BCCI's financial statements "give a true and fair view" of its financial condition for each year;

(u) By engaging in fraudulent sales of securities and deceptive and dishonest acts in connection with CenTrust selling $150 million in subordinated debentures;

(v) By engaging in financial institution and bank, mail and wire fraud in illegally infiltrating the U.S. banking industry and in helping to falsify the apparent financial condition of CenTrust to avoid its regulatory seizure, keeping the bank operating for one or two more years, causing the United States to spend hundreds of millions more to "bail out" that bank when it was finally seized;

(w) Covering up its activities and/or obstructing justice in the United States by making repeated false statements about BCCI's actual control of First American, CenTrust, NBG and Independence Bank, by arranging for a plea bargain in connection with a money-laundering plea in Florida that could bar any further criminal prosecution of BCCI in the United States by federal authorities, and by lying to federal investigators and grand juries, paying off employees not to "blow the whistle" and in advising one or more witnesses (Amjad Awan) to leave the United States to avoid giving testimony to the law enforcement or investigating agencies in the United States;

(x) By helping to funnel at least $3 million in illegal proceeds from an Orange County, California, telemarketing scheme out of the United States;

(y) By financing the sale of or attempting to finance the sale of illegally, French-manufactured military fighter aircraft owned by Argentina to third world countries, including Saddam Hussein of Iraq, from its Miami, Florida, bank;

(z) By financing international terrorism, including financing and assisting the notorious ANO

organization, financing the purchase, sale and delivery of illegal arms (including arms shipped to Saddam Hussein in Iraq) by Abu Nidal and some 10 others, including Samir Najmeddin, through some 42 accounts involving $50 million in BCCI's London Bank;

(aa) By assisting the former President of Peru, Alan Garcia, to steal millions from his nation's treasury, funneling the money to secret accounts via the BCCI Bank systems;

(ab) By paying some $3 million in bribes to Peruvian Central bankers to obtain deposits from Peru's Central bank;

(ac) By helping Munther Ismael Bilbeisi illegally sell Jordanian helicopters to Guatemala at inflated prices so that he could pay kickbacks to relatives of the President of Guatemala and certain high military officials;

(ad) In December, 1985, BCCI, through its London office, issued an Irrevocable Documentary Letter of Credit in the amount of US $11,250,000 in favor of B.R. & W. Industries Ltd., a British arms dealer. The letter of credit was to cover up the cost of 1,250 BCM-71A TOW Missiles which had been manufactured in the United States in 1980-1981, 5,000 PG-7WM Rockets, 20 Stretta 2M Anti-aircraft missiles, two Strella 2M Missile Launchers and 2,000 AK-47 Automatic Rifles. The American TOW missiles were still in the manufacturer's original packing crates. The rockets, anti-aircraft missiles, missile launchers and automatic rifles were manufactured in Poland; and

(ae) The invoices and letters of credit were altered, with the complete knowledge and participation of BCCI officials in London, to indicate that the 1,250 BCM-71A TOW missiles were "lift trucks." The arms were shipped to Sepah Passdarn in Tehran, Iran, although the shipping documents indicated that the purchaser was the Arabian Gate General Trading Co. located in Dubai, United Arab Emirates. Iran guaranteed access and refueling for the delivering aircraft because the Iraq-Iran war was waging at the time.

[Complaint Excerpted Here]

VIII. BCCI'S FALSE FINANCIAL STATEMENTS AND REPORTS

296. BCCI's year-end financial results and statements were issued to BCCI's existing depositors, potential depositors, customers and the public via annual reports, brochures and other solicitation materials and also included in regulatory filings made in the U.S. and elsewhere. For many years, BCCI issued annual reports, promotional materials, advertisements and public statements that represented that the Bank was prudently and conservatively managed, was operating legally and in close collaboration with and under the oversight of banking regulators in several jurisdictions, had huge capital and assured an adequate liquidity. For instance, brochures issued in 1985 (Exhibit 5) and widely disseminated by BCCI in the United States and elsewhere to depositors, potential depositors, the financial press and regulators, stated BCCI "is adequately supported by a capital fund in excess of $1 billion . . . [its] results show a total shift of

emphasis from growth to consolidation, from quantity to quality – an emphasis on high capital/asset ratio, high liquidity, high quality of assets. . . . The focus will continue to accentuate on conservatism and prudence during the next decade." Also, in 1988, Abedi publicly represented that BCCI was a "totally apolitical" body and "our success so far is due to the honesty and integrity of purpose of the entire staff." When BCCI finally reported losses in 1988 and 1989, it downplayed the significance of these losses, attributing them to isolated and/or nonrecurring factors, received opinions from Price Waterhouse on its financial statements that were unqualified with respect to its financial condition and gave no indication it was suffering from any serious operational, control or financial problems. In fact, in April, 1990, when the BCCI conspiracy was in danger of unraveling from the accumulated effects of years of illegal diversion and waste of its assets, improper lending and improper financial transactions, Price Waterhouse and several top BCCI executives realized that a major infusion of cash to BCCI was required to avoid its immediate collapse and exposure of the Ponzi scheme that BCCI actually was conducting. Price Waterhouse, Price Waterhouse/UK, Price Waterhouse/Luxembourg, these executives and others (the "Task Force") undertook a thorough review of BCCI's banking business which easily documented huge irregularities – gross abuse of proper banking and lending standards – and improper accounting practices, concluding that: "The Task Force feels that the regular annual audit thereof should have easily detected and corrected such haphazard transactions several years ago. . . . It took the Task Force only a few days to note

that nearly each of these cases had common patterns of initiation activity, fund flows, weak documentation . . . which any reasonable audit process should have tracked down, identified and stopped forthwith. . . . It is in the interest of all concerned who are involved in safeguarding the existence of BCC Group – the shareholders, the directors, the management, the auditors and finally, the regulators, to close this matter urgently and allow the Bank's Annual Report to be issued to the public, globally at the earliest. Without this there is now a grave and real danger of a serious 'run' on the Bank worldwide resulting in an uncontrolled situation which would even close the entire Group." Despite their knowledge of the BCCI Banks' prior profligate and illegal practices and their gravely impaired financial condition, defendants conspired to make the grave, indeed fatal, situation in April, 1990, appear positive, with Abu Dhabi supposedly injecting new capital into BCCI, BCCI telling its depositors and the public that BCCI was operating "very normally," the Bank of England was "fully in the picture," there was "no real ground for concern by depositors," and that the movement of the Banks' operations headquarters to Abu Dhabi from London was to save overhead and increase efficiency, and Price Waterhouse issuing an unqualified opinion on BCCI's financial statements, while BCCI top executives and directors issued strong positive reassuring statements to its depositors and the general public. In the Spring of 1991, the scheme was again about to unravel as BCCI's operations and controls had continued to deteriorate, it had continued to suffer huge losses, impaired cash flow and was riddled with billions in non-performing and/or uncollectible loans. However, Price Waterhouse

agreed with BCCI and the Sheikh of Abu Dhabi to once again give the BCCI Banks clean audit opinions if the Sheikh put in another $600 million in capital and agreed to indemnify Price Waterhouse and Price Waterhouse/UK for giving the clean opinion. However, before the clean opinion could be issued, due to certain information provided secretly to the Bank of England by an ex-BCCI employee, Price Waterhouse/UK was ordered by the Bank of England to prepare a report for it, without the knowledge of BCCI and its top executives, as to the condition and practices of the Bank. In late June, 1991, Price Waterhouse and Price Waterhouse/UK admitted to the Bank of England that there was over $600 million in unrecorded deposits in the BCCI Group and that "the accounting records and financial position of the [BCCI] Group have been falsified in relation to the above transactions for a substantial number of years [and] these transactions represent only a part of a wholesale deception to misrepresent and falsify the financial position of [BCCI] over the last decade through a series of complicated manipulations [including] a significant falsification of the accounting records (involving false loans, transactions, and confirmations) on such a scale that the true financial history of BCCI is unlikely to be able to be recreated" and that "it would appear that the bank has generated significant losses over the last decade and may never have been profitable in its entire history." A few days later, the BCCI Banks were seized in a worldwide coordinated effort of banking regulators. The financial results and statements, including Consolidated Balance Sheets, Consolidated Statements of Income, Consolidated

Statements of Shareholder's Equity, Consolidated Statements of Changes in Financial Position and the Notes to the Consolidated Financial Statements, were false and misleading in overstating the following: assets (including cash and cash equivalents), capital, profits and revenues; and did not fairly or accurately present BCCI's financial condition or results from operations. BCCI's statements were manipulated by improper accounting techniques and its assets, capital, profits and revenues were materially overstated and its loss in 1989 was understated because BCCI had failed to make accounting adjustments required for a true, fair and accurate presentation of its actual results of operations. For instance, BCCI recorded over $570 million in income on interest payments on the huge CCAH loans to the purported shareholders of CCAH, even though that interest had not been paid over the years, but merely recorded on BCCI's books.

297. In BCCI's 1986 Annual Report and Accounts, which was issued in the spring of the following year and was widely circulated by BCCI during that year to depositors, potential depositors in the United States and elsewhere, as well as to the financial press and regulators, the Report of the Directors, signed by Abedi, stated:

> BCC Group operating through a global network of branches and offices in 72 countries, did not escape the impact of the international economic environment, nevertheless it showed its resilience by producing satisfactory results in the commercial banking sector. . . . Excluding [an] exceptional loss, the normal commercial banking operations showed a profit of U.S. $283 million before loan loss provision and tax.

The year-end balance sheet clearly reflects the Group's financial strength. The capital/asset ratio stood at 8.4% while the advances/deposits ratio continued to be less than 54% again reflecting a position of high liquidity which has been a cornerstone of our policy.

The key aspects of the balance sheet and of the operating results for the year are as follows:

Capital Fund

The year-end Capital Fund figure now stands at U.S. $1.471 million as against U.S. $1.190 million at the end of 1985, an increase of U.S. $281 million.

* * *

Pursuant to the policy of the Shareholders and the Directors to strengthen the capital base of the Group a Rights issue of U.S. $250 million was made during the year at a premium price of U.S. $40 per share of U.S. $10. The Rights Issue was fully subscribed by our shareholders.

* * *

Reserves and Provisions

As part of the ongoing process of building up the Capital Funds, the total of Reserves and Retained Earnings was raised to U.S. $381 million from U.S. $265 million in 1985.

In determining the Loan Loss Provision for the year management has carried out a full review of the Loan Portfolio and decided to make a conservative charge of U.S. $112 million for the year. This builds up the total provision . . . to U.S. $441 million (1985: U.S. $371 million). After

allowing for full and adequate specific provisions, general provisions are now nearing 1% of the Loan Portfolio. It is management's intention to continue to build up this provision to a higher level in coming years with a view to provide further protection from any unforeseen adverse developments in the future.

Operating Results

[T]he Group generated a commercial banking profit of U.S. $283 million before tax and provisions after absorbing U.S. $21 million as a consequence of currency devaluations in 1986. Results for the year, before taxation and the net exceptional loss of U.S. $55 million, relating to 1985, stood at U.S. $170 million. There will be no further impact of the 1985 position on our earnings in future years.

* * *

We feel that the BCC Group is now well poised to avail of maximum advantage from the expected upturn in international banking particularly in the area of international trade.

Outlook for 1987

Although the economic outlook for 1987 remains uncertain, particularly in the third world, the Directors, on the strength of 1987 Group budget figures and other indicators, feel confident that the results for 1987 will show a significant improvement.

The Directors take this opportunity to thank the Central Banks and Supervisory Agencies in countries where the Group Banks are operating for the valuable guidance extended to them.

The December 31, 1986, financial statements reported assets of $17.5 billion, capital of $1.4 billion and earnings of $31 million.

298. The opinion issued in the name of Ernst & Whinney on BCCI's 1986 financial statements stated:

> We have examined the consolidated accounts of BCCI Holdings (Luxembourg) S.A. . . . Our audit has been carried out in accordance with approved auditing standards.
>
> In our opinion, based on our examination and the reports of the auditors of certain subsidiaries and affiliates not audited by us, the consolidated accounts give a true and fair view of the state of affairs at December 31, 1986, and of the results, changes in retained earnings and source and application of funds of the group for the year then ended.

299. BCCI's 1987 Annual Report & Accounts, which was issued in the spring of the following year and was widely circulated by BCCI during that year to depositors, potential depositors in the United States and elsewhere, as well as to the financial press and regulators, contained a Report of Directors, signed by defendant Lamarche, which stated:

> *BCC Group's Performance*
>
> The balance sheet reflects our management policies to maintain prudent ratios and a high level of liquidity. Special attention is also being paid to the quality and diversification, geographically and industry-wise, of the group's loan portfolio. Seen in the light of the somewhat mixed economic world conditions and the importance of our activities in the Third World

countries, the 1987 results must be considered as satisfactory.

Capital Fund

* * *

[T]he Group's Capital Fund now totals $1.469 million following the issue of and subscription to $30 million additional convertible Subordinated Capital Notes and $50 million non-convertible Subordinated Capital Notes, thus providing a conservative capital/asset ratio of 7.48%.

Liabilities

The Group's customer deposits increased by approximately 12% from $13.8 billion to $15.4 billion. It reflects management's policy to maintain a strong diversified deposit base.

The other source of funds, borrowings from banks, stood at $2 billion thereby raising total deposits and other funds to $17.7 billion, as against $15.6 billion at December 1986.

Assets

Loans and advances rose to $9.2 billion as against $7.6 billion in 1986 and made up 47% of total assets. Following our established policy, the emphasis is trade related, of a short-term self-liquidating nature. Over $9.5 billion was maintained in various forms of liquid or near liquid assets. It includes inter-bank balances at $5.4 billion, certificates of deposits of prime international banks at nearly $2.0 billion and readily marketable securities – primarily U.S. bonds and Treasury Notes – totalling $2.1 billion.

The total asset base amounted to $19.6 billion, a rise of $2.1 billion over 1986.

The ratio of advances to customers' deposits stood at 59.8% at the end of 1987.

Reserves and Provisions

In addition to the contingency provision allocated for potential country and more general risk situation relating to prior years, specific Loan Loss Provisions for the year were set at $70 million. The figure was arrived at after a full review of the Loan Portfolio and your Directors are of the opinion that this represents an adequate assessment.

Operating Results

The operating profit of the Group stood at $185.4 million as against $231.6 million in 1986, before Tax and Loan Loss Provision. The reduction was mainly the result of unfavorable exchange rate movements against the U.S. dollar in several countries where we operate and disappointing income from Treasury. This last area will receive management's full attention in 1988.

* * *

Outlook for 1988

Notwithstanding the uncertainties in the economies of some countries where the group has a presence, our operations are now sufficiently diversified geographically for the group to face the future with confidence. With a branch network covering 73 countries, the group is in a favourable position to service international trade and to provide an increasing range of other financial services to our growing clientele. On the strength of our 1988 budget figures, the

> Directors expect a significant improvement in the 1988 earnings.
>
> * * *
>
> The Directors again take this opportunity to thank the Central Banks and Regulatory Authorities in the countries where BCC operates for their continuing guidance and day-to-day assistance.

BCCI's 1987 financial statements reported total assets of $19.6 billion, total capital of $1.4 billion and net income of $37 million.

300. The opinion issued in the name of Price Waterhouse on BCCI's 1987 financial statements provided:

> We have audited the consolidated financial statements . . . in accordance to International Auditing Guidelines. In our opinion, the consolidated financial statements give a true and fair view of the financial position of BCCI Holdings (Luxembourg) S.A. and its subsidiaries and affiliates at December 31, 1987 and the results of its operations for the year then ended in accordance with International Accounting Standards.

301. BCCI's 1988 Annual Report & Accounts, which was issued in the spring of the following year and was widely circulated by BCCI during that year to depositors, potential depositors in the United States and elsewhere, as well as to the financial press and regulators, contained a report of the Directors signed by defendant Lamarche which stated:

> A number of unfortunate circumstances marred the otherwise satisfactory operational results of the Group in 1988. . . . In October, we were faced

with an indictment in Tampa, Florida, which alleged that nine of our employees had violated U.S. money-laundering laws by laundering $14 million. The individuals have denied the charges and are contesting them vigorously, as are the bank entities. It has not been suggested or alleged that either the corporate management or the Directors had any knowledge of the transactions. Appropriate steps have been taken in the United States and elsewhere to strengthen procedures and controls, particularly on client relationships.

Although this last event generated a high degree of adverse publicity, the Group's underlying strength and viability remained unimpaired resulting in a strong balance sheet at the year-end with assets exceeding $20 billion and an improved operating profit of $192 million for the year. The final profit figures, however, were strongly influenced by a significant increase in provisions against commercial and cross border risk situations, a step decided on as a matter of prudence and in the light of the regulatory guidelines on such risks. The decision had the full support of our shareholders who contributed to the increase of $100 million in the Group's Capital fund subsequent to the year end. . . . With our geographic diversification and having made conservative provisions in 1987 and 1988, we can face the next financial year with confidence and anticipate a good improvement in our earnings.

* * *

I take this opportunity to thank the Central Banks and Regulatory Authorities in the countries where BCC operates for their guidance and day-to-day assistance.

302. The 1988 Report also contained a Management Report, which stated:

BCC, founded as a truly international bank, matches the needs of the present with the likely needs of the future. It is committed to the principle of promoting local and international trade and to be the bridge between the developing and the developed countries of the world. BCC today has the fifth largest banking network in the world, spread over Africa, Asia, Australia, Europe, the Far East, the Middle East, North and South America, serving them through a dedicated team of 14,000 people.

BCC claims no country as its own, but treats every city and every town it operates in as its home. It is committed to local communities with its belief that indigenous enterprise can benefit from the application of financial skills and knowledge acquired through years of international experience.

* * *

BCC is at a threshold in the process of its future development. Whereas it continues to progress and grow in the markets where it is more entrenched, such as the Far East, Middle East, South Asia and Africa, it has to adopt new policies and strategies in other markets, particularly industrialized countries, to enhance and further diversify its profitability and also meet the ever-changing expectations of the customer.

BCC has, therefore, set up a Strategy & Planning Group in its management structure distinct from its existing Planning Division. This group will formulate short and long term strategies of business. It will make a careful assessment of each geographic region's potential and possibilities taking into account economic and political conditions, the nature of competition, the products in demand and those for which demand can be created.

Success is the best motivator and enhances creativity. The Strategy Group will therefore also identify the sectors where BCC could be more successful in the immediate future. This group will also be responsible for matching the possibilities with BCC's marketing capability either present, enhanced or acquired.

In the new strategy, this aspect is already being given greater attention. A significant number of senior bankers from other large international banks have already joined BCC. The process of education, training and skill development of the existing staff is being improved and accelerated, both by in-house facilities and with the assistance of outside expertise.

While our products, delivery systems, and market niches may undergo changes, our basic business and the principles of conducting the same are not expected to change in the near future. This means that:

- our principal activities will be in the area of commercial banking

- our business policies will be based on the following preferences

- High liquidity to be maintained through broad based and diversified customer deposits
- Cost of deposits will continue to be kept at an economic level
- Quality of assets to remain high – largely short term, self-liquidating
- Quality profit generated both from sustainable and regular streams and through short term transactions and deals.

BCC is destined to earn its distinction by the quality of its operation and by the role it plays as a link between what is and what is possible – a bridge between developing and developed countries.

We have every reason to look to the future with confidence and are determined to make 1989 significantly better than last year.

303. BCCI's 1988 financial statements reported assets of $20 billion, total capital of $1.4 billion and a loss of $48 million. Price Waterhouse's opinion on the 1988 financial statements stated:

We have audited the consolidated accounts of BCCI Holdings (Luxembourg) S.A. . . . in accordance with International Auditing Guidelines.

As discussed in Note 23, legal procedures are pending in Tampa, Florida against the Company, BCCI S.A. and BCCI (Overseas) Limited. The ultimate outcome of the proceedings and the effect on the group's operations are presently uncertain and no provision has been made for any liability that may arise.

> In our opinion, subject to the effects of such adjustments, if any, as might have been required, had the outcome of the uncertainty referred to in the preceding paragraph been known, the consolidated accounts give a true and fair view of the financial position of the group at December 31, 1988 and the results of its operations and changes in financial position for the year then ended in accordance with International Accounting Standards.

304. BCCI's 1989 Annual Report and Accounts, which was issued in the spring of the following year and was widely circulated by BCCI during that year to depositors, potential depositors in the United States and elsewhere, as well as to the financial press and regulators, contained a Report of Directors signed by defendant Lamarche, which stated:

> The most significant event of consequence, affecting 1990 and beyond, is the major restructuring of the Group's shareholding and the subscription by the Abu Dhabi Government of US $400 million for new capital and their acquisition of certain existing shares, such that together with related institutions they now hold over 77% of the share capital of the holding company. This gives the necessary strength to the BCC Group to support its future performance and development.
>
> * * *
>
> BCC's fundamental operating performance showed an improvement in revenue generation and expense control as reflected by an operating profit of $224 million before provisions, taxes and extraordinary items. However, pursuant to

an intensive review of our loan portfolio, we believe it prudent to establish a large provision against known and possible future loan losses in order to allow the Group to continue to build on its operating strengths. Accordingly, we have taken a charge against earnings of $600 million which caused a significant financial loss for 1989 after provisions. Our provision against cross border exposure to troubled-debtor countries is now about 50%. Total loan loss reserves for all categories of loans exceed $1.1 billion, including a general reserve approaching $100 million.

A decision of this magnitude clearly had a material impact on our capital, upon which, our future growth and success depend, and we are therefore pleased to report that the Directors had the full support of the shareholders in establishing these provisions. In addition to a $75 million Rights Issue during 1989, the Government of Abu Dhabi has, as mentioned above, subsequently subscribed a further $400 million in equity capital, thereby rebuilding the Group's capital base. There was also an increase of $106 million in Subordinated Capital Notes during the year. The year-end Capital Fund of $1.076 million has since been restored to above $1.475 million in April 1990. The risk-weighted capital adequacy of the Group, based on the 1989 accounts and the fresh injection of capital in April 1990, exceeds the 8% target set by the Basle Committee of the Bank for International Settlements for 1992.

The Directors are also pleased to report the settlement, in February of this year, of the indictments in Tampa, Florida which were mentioned in last year's report. Although a civil forfeiture

was imposed, the Group considers that the settlement was satisfactory and brings to an end an unhappy chapter. The incident had no significant negative impact on our global business, customer relationships or operating results. Our intention is to continue a presence in the USA. As noted in the attached Management Report, intensive work has taken place throughout the Group to strengthen procedures and controls and to develop a vigorous compliance function.

As projected last year, operating earnings improved from $192 million to $224 million over the previous year. Other positive developments included an increase to $18 billion in our traditional line of business of trade finance resulting in a substantial increase in commission and exchange income. Furthermore, the escalating operating expenses of previous years were not only capped, but were actually reduced.

The majority of locations in the Group produced better results in comparison with 1988. There has been a noteworthy increase in profitability in the Far East, the Gulf area and Africa. The Statement of Condition also demonstrates a gratifying growth in customers' deposits which allows us to remain independent of volatile money market funding sources.

We take this opportunity to acknowledge and thank the Central Banks and Regulatory Authorities in the countries where BCC operates for their continuing guidance and support.

Despite the setbacks there have been many encouraging developments during 1989 and the Directors intend to build on these in 1990 beginning with a major reorganisation of the Group. Where appropriate we shall consider operations

and significantly reduce administrative expenses by reorganising the Group's Management. We look forward to the opportunities presented by the increased integration of major markets which our extensive global network is well suited to serve. Technological updating will be vigorously pursued. Renewed emphasis will be placed on the allocation of enhanced capital resources to optimise our return on investment. The Group faces the future with renewed strength and a positive attitude and is confident of the support of shareholders, regulators, customers and staff.

305. The 1989 Annual Report also contained a Report of Management, which stated:

> [T]he management has re-evaluated the asset portfolio of the Group and assessed its carrying value in the light of current global market conditions. . . .
>
> The exercise has been exhaustive resulting in a substantial loan loss provision in the 1989 accounts of $600 million . . . [which is] considered satisfactory. The balance, besides an allocation of general provision, includes a significant charge of approximately $300 million against a limited number of commercial loans which were being centrally monitored and against which it was considered prudent to make a special provision. As a result, the Group has shown a net loss of $498 million for 1989.
>
> The cumulative provision now carried on the Books of the Group exceeds $1.1 billion against gross loans of $11.4 billion, a conservative level reflecting the global uncertainties in the banking industry.

It is with a great sense of satisfaction that we are able to report the major support given by the Government of Abu Dhabi in this respect. Not only have they subscribed $400 million in new capital – largely eliminating the negative impact on the Capital Funds position of the Group – but even more significantly, this has resulted in the Abu Dhabi Government, along with related Abu Dhabi institutions having now acquired over 77% of the shares of the parent company of the Group, BCCI Holdings (Luxembourg) S.A., thus providing an increasingly solid and sound foundation.

The shareholders have indicated to the Directors their desire to restructure and reorganise the Group over the next year or two so that its real strength and earning potential can be brought into focus and enhanced, and its weak areas either strengthened or shed, which should result in a significant expense reduction.

- Notwithstanding the difficulties described above, the Group has made significant progress in 1989 in the following areas:

- Number of customer relationships has increased globally to over 1.3 million.

- Growth in deposits, which now total nearly $18.5 billion despite the distractions caused by the proceedings in the USA.

- Assets of over $23 billion.

- Global trade finance business exceeding $18 billion.

- Gross income in excess of $2.6 billion.

- Complete halt in the escalation of operation costs worldwide as against increases averaging more than 12% per annum over the preceding years.

* * *

Liquidity

Enhanced efforts to maintain high liquidity resulted in an increase in liquid assets from $9.8 billion to $12.4 billion during the year. At the year-end, liquid assets represented 52% of the total Consolidated Balance Sheet, against 47% last year.

The investment portfolio totalling $1.812 million, slightly below the 1988 level, continues to consist primarily of US Treasury stock on which there has been a significant recovery in the underlying market value and US and other Government Bonds and Notes. In the proposed reorganisation of the Group, the treasury operations will be further rationalised and restructured.

* * *

Operating Results

The Group's operating profit increased from $192 million in 1988 to $224 million in 1989, before taxes, provisions and extraordinary items. This result is in line with management estimates for the year. . . .

* * *

[T]he Group's overall asset re-evaluation referred to above, and partly from the increase in US Dollar interest rates in relation to our substantial fixed-income investment portfolio. The significant provisions set aside in 1989 and

the replenishment of capital are expected to reduce substantially the negative impact of non-accruals.

Operating Expenses

In last year's report, Management had expressed its concern at the continuing increase in operating costs which had risen at an average of 12% per annum over the last several years. It had indicated its serious intent to bring this critical aspect of operations under control. Progress has been made in this area resulting in a marginal reduction from $584 million in 1988 to $575 million in 1989 notwithstanding the global inflationary effects.

Further stringent action is planned which is expected to bring about significant cuts in operating costs in 1990 and after.

* * *

Prospects for 1990

Given the major restructuring in shareholding and the more direct overview from Abu Dhabi, 1990 is expected to show significant changes in the Group's global structure.

However, BCC's essential market niche is not expected to change in the near future. Our basic business will be commercial banking through deposit funding with enhanced focus on asset quality.

Greater attention will also be placed on product development and delivery systems. As an international banking Group whose core business is, and will remain, trade finance, BCC will upgrade computer support systems to permit the Group to make full use of its extensive

> branch network. Negotiations with suppliers are at an advanced stage and it is anticipated that we shall shortly order new systems both for commercial banking and treasury operations.
>
> The BCC Group will seek to increase its competitiveness by strict overhead expenditure controls and a continued policy of funding through relationship-based customer deposits inevitably, increasing emphasis will need to be placed on "return on capital" and "return on assets" in a period of increasing focus on capital adequacy.
>
> With the support of our new shareholders we are confident that a bright future awaits the Group.

306. BCCI's 1989 financial statements showed assets of $23.5 billion, total capital of $1.0 billion and a loss of $497 million. The opinion issued in the name of Price Waterhouse on these financial statements stated:

> We have audited the consolidated accounts of BCCI Holdings (Luxembourg) S.A. . . . in accordance with International Auditing Guidelines. These accounts have been drawn up on the basis described in Note 1.
>
> In our opinion the consolidated accounts give a true and fair view of the financial position of the group at December 31, 1989 and the results of its operations and changes in financial position for the year then ended in accordance with International Accounting Standards.

307. The foregoing representations, statements, financial statements and opinions were each materially false and misleading when issued, were the type of representation that was considered important by a potential or

existing depositor and were, in fact, relied on by such potential and existing depositors to deposit money in or retain existing deposits of money in the BCCI Banks. In addition, it is impossible for a bank like BCCI to operate and to solicit and accept deposits unless it has the permission to do so from banking regulators in several countries, which permission cannot be obtained or maintained absent the submission of audited financial statements showing adequate capital and liquidity for safe operation supported by the opinion of a reputable independent certified or chartered public accountant.

308. For the years 1984 forward, BCCI's financial statements were materially overstated in their reported assets, net worth, profit and liquidity and its liabilities were materially overstated – by hundreds of millions of dollars and its 1989 loss was understated. *Examples* of the types of transactions which resulted in these material misstatements are set forth below:

(a) Beginning in 1984, BCCI had made what ultimately totalled some $856 million in loans to the Ruler of Fujeirah, Ruler of Ajman, al-Fulaij, Shorafa, Khalil, Jawhary, Adham and Midguld and Rubstone Trading (owned by M.M. Hammoud) and which the Bank was recording over $130 million per year in income and which were supposedly secured by shares in Credit and Commerce American Holdings. The value of the security, however, was never even close to equivalent to the amount of the loans and most of the CCAH shares supposedly pledged as security had never been formally pledged. In addition, there were signed promissory notes for only $270 million of the $856 million; by 1990, and no signed loan agreements existed for many of the loans.

These loans were constantly increased year to year to pick up interest on the loans which was not being paid and hundreds of millions of such loans were made without formal lending committee and board approval. By 1990, at least five of these nine borrowers refused to even acknowledge these loans from BCCI;

(b) For many years, BCCI made large loans to Adham which totalled (exceeding his CCAH "secured" loans) over $207 million and on which the Bank was recording income of over $30 million per year. However, there were never any formal loan agreements covering these huge loans, Adham had not submitted any financial statements to support these loans and the security for these loans was of dubious value;

(c) From the early 1980's at least, BCCI had outstanding large loans to A.R. Khalil, totalling $150 million by 1989 and on which BCCI was recording some $26+ million a year in income. However, Khalil had little if any direct contact with BCCI after 1985, refused to confirm the loan after 1985, and the interest on the loans had been "paid" for several years by loaning additional funds – over $70 million – even though BCCI was told by its accountants this was improper;

(d) For many years, BCCI was making large loans to the Gulf Group – a Pakistan shipping company owned by the Gokal brothers, which aggregated over $700 million in 1989 and on which BCCI was recording income of about $74 million per year. These loans increased dramatically from 1986 on, largely because the

Gulf Group could not pay the interest on the loans without additional loans being made. In addition, there was no evidence to support the value of the security;

(e) In October, 1989, BCCI advanced some $146 million to the Mahfouz family (including Shiekh Khalil Bin Mahfouz) without any stated or disclosed purpose for the loan and without any loan agreements, promissory notes or security documentation;

(f) In the 1980's and thereafter, BCCI made large loans – over $53 million – to Saudi Development and Commercial Company, without obtaining any information on the nature of the company's operations or its financial position – including not even obtaining financial statements – based on security worth less than $6 million;

(g) By 1988, BCCI had loaned, in a series of loans, over $108 million to M.M. Hammoud, a Lebanese businessman, and companies he supposedly owned or controlled, without obtaining any proof Hammoud actually owned these companies; a significant number of such loans were non-performing;

(h) For many years, BCCI made large loans to the Saigol family, which aggregated over $43 million by 1991. The loans were constantly overdue and were transferred between family members when repayment was not possible. Often loans were made at one BCCI branch to repay loans due through another BCCI branch;

(i) In November, 1988, BCCI disbursed $11.2 million to a Grand Cayman account no. 11011103 without obtaining any documentation to support that advance;

(j) For many years, BCCI made huge loans to the Pharaon Brothers (Wabel and Ghaith) which by 1989 totalled $390 million and on which BCCI was recording millions in income. There were no loan agreements or promissory notes to support these huge requests and hundreds of millions in loan disbursements were not supported by any writings or direction from the Pharaons. This loan was over $100 million over BCCI's legal lending limit;

(k) BCCI had over $41.3 million in loans at its Grand Cayman office which were all grossly delinquent loans from other BCCI branches which had millions in delinquent interest and were very inadequately documented;

(l) BCCI had loans exceeding $147 million to Faisal Saud al-Fulaij, a Kuwait businessman, and his Middle East Investment Company by 1989, for which there were no loan agreements and no signed promissory note and upon which interest was seldom paid – thus requiring BCCI to loan large additional amounts to make the loans appear current;

(m) BCCI had $151 million in loans to Prince International Holdings and International Medical Corporation Group by 1989, which could not be paid because the underlying DMC project could not service the loan and there was no source of income to repay the loans;

(n) BCCI had loans to Al Haji Sultan Fadel, first made in 1985, which totalled $35 million by 1989. Interest was not paid on these loans and there was no evidence of the ability of Fadel to service this loan;

(o) BCCI made loans for years to Shiekh Hamdan Bin Mohammed al-Nahayan which totalled $109 million in late 1990, for which no financial statements were provided and no signed loan agreements or notes were provided; and

(p) Most of the loans described in the preceding paragraphs have been and are uncollectible and are delinquent and should have been written off long ago.

[Complaint Excerpted Here]

COUNT II

VIOLATIONS OF SECTIONS 1962(c) AND (d) OF RICO

343. Plaintiffs incorporate by reference and reallege each of the foregoing paragraphs as if fully set forth herein.

344. This claim for relief arises under §§ 1962(c) and (d) of RICO and is asserted against all defendants.

345. Plaintiffs are each a "person" as that term is defined in § 1961(3) of RICO.

346. Defendants are each a "person" as that term is defined in § 1961(3) of RICO.

347. BCCI and/or the BCCI Banks are each an "enterprise" as that term is defined in § 1961(4) of RICO. At all times relevant to the events alleged herein, defendants were employed by and/or associated with BCCI or, in the alternative, the BCCI Banks or, in the alternative, an association-in-fact of the defendants, all of which were engaged in and the activities of which affected interstate and foreign commerce. Plaintiffs allege that the pattern of

racketeering activity and the operation of the BCCI criminal enterprise and/or the association-in-fact enterprise were one in the same and that the operation of the BCCI Banks, as conspired in and aided and abetted by the other defendants, was an entirely criminal operation and Ponzi scheme based on illegal predicate acts, false financial statements and regulatory filings and misuse and diversion of depositors' funds.

348. (a) As alleged above, defendants have engaged in, conspired to commit, and/or aided and abetted a pattern of criminal acts including, but not limited to, the issuance of false and misleading financial statements and regulatory filings and reports, constituting multiple acts of (a) bribery, or attempted bribery in violation of 18 U.S.C. § 201; (b) mail fraud in violation of 18 U.S.C. § 1341; (c) wire fraud in violation of 18 U.S.C. § 1343; (d) bank fraud in violation of 18 U.S.C. § 1344; (e) obstruction of justice in violation of 18 U.S.C. §§ 1503, 1510, 1511 and/or 1512; (f) engaging in interstate and/or foreign travel in aid of racketeering enterprises in violation of 18 U.S.C. § 1952; (g) laundering monetary instruments in violation of 18 U.S.C. § 1956; (h) interstate transportation of stolen property and/or Travel Fraud in violation of 18 U.S.C. §§ 2314 and 2315; (i) drug offenses; and (j) fraud in the sale of securities which, in turn, constitute "racketeering activity" as that term is defined in § 1961(1) of RICO, 18 U.S.C. § 1961(1). Each such act of racketeering activity had similar purposes, involved the same or similar participants and methods of commission and had similar results impacting upon similar victims, namely plaintiffs and the members of the class, and thus constituted a "patter of racketeering activity" as that term is defined in

§ 1961(5) of RICO, 18 U.S.C. § 1961(5). Each defendant agreed and conspired with the other defendants and co-actors to commit the above referenced predicate acts of racketeering activity and to violate §§ 1962(c) and (d) of RICO.

(b) The activities of the BCCI enterprise and/or the association-in-fact enterprise were synonymous with the pattern of illegal racketeering activity detailed herein. The pattern of racketeering activity did not differ from the usual and daily activities of the BCCI or association-in-fact enterprise since every day they operated as a criminal enterprise by (i) lying to the United States and other banking regulators; (ii) publicly disseminating false financial statements and information; (iii) concealing adverse material information about its operations; and (iv) misusing and stealing depositors' funds. Thus, the daily activities of the enterprise(s) differed little, if at all, from the pattern of racketeering activity alleged herein.

(c) Description of Specific Predicate Acts, Dates of Predicate Acts, Statutes Violated

Among the illegal acts constituting the pattern of racketeering activity and violation of the laws of nations and treaties of the United States carried out by the BCCI Banks and the defendants herein were the following (9(a)-(i)) is expressly incorporated herein by reference:

(d) Illegally obtaining and maintaining control for BCCI of NBG, First American, CenTrust and Independence Bank in the United States by lying to the FRB and other federal banking agencies and regulators in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire

Fraud) and 18 U.S.C. § 1344 (Bank Fraud), including the preparation and filing by mail of Forms Y-6 and Y-7 on an annual basis. With respect to each illegal acquisition, these predicate acts occurred during the time periods indicated: NBG (1975-1991); First American (1978-1991); CenTrust (1985-1991); and Independence Bank (1985-1991). Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Price Waterhouse, Price Waterhouse/US, Price Waterhouse/UK, Price Waterhouse/Luxembourg, Ernst & Young, Ernst & Young/US, Ernst & Young/UK, Ernst & Young/Luxembourg, Abu Dhabi, Abu Dhabi Investment/ Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Sheikh Adham, Khalil, Jawhary, al-Fulaij, Abedi, Naqvi, Iqbal, al-Mazrui, Lamarche, van Oenen, Twitchin, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Lance, Paul, Independence Bank, Dobrich, Shoaib and Bank of America;

(e) Using its United States agency offices to finance illegal drug transactions committed by Pablo Escobar and Jorge Ochoa, leaders of the Medellin drug cartel, including transactions involving the illegal transportation of narcotics into the United States in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), 18 U.S.C. § 1956 (Laundering of Monetary Instruments), 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity) and 18 U.S.C. § 1961(1)(A) (Dealing in Narcotic or Other Dangerous Drugs Punishable

Under Laws of U.S.). These predicate acts occurred during 1985-1990. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Capcom, Magness, Romrell, Noriega, Lamarche, van Oenen, al-Mazrui, Hartmann, Twitchin, Shafi and Bank of America;

(f) Misusing for illegal purposes and/or stealing (*i.e.*, siphoning off) the BCCI Banks' deposits, including portions of the deposits of U.S. residents and citizens, portions of which had been obtained in the United States and diverted portions of which were, in part, used in this country to finance BCCI's illegal infiltration of the United States banking system, to pay off Clifford and Altman and to make payments to obstruct United States justice in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), 18 U.S.C. § 201 (Bribery of Public Officials and Witnesses), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1975-1991. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts along with BCCI were Price Waterhouse, Price Waterhouse/US, Price Waterhouse/UK, Price Waterhouse/Luxembourg, Ernst & Young, Ernst & Young/US, Ernst & Young/UK, Ernst & Young/Luxembourg, Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Sheikh Adham, Khalil, Jawhary, al-Fulaij, Abedi,

Naqvi, Iqbal, Awan, al-Mazrui, Rizzi, Akbar, Ahmad, Capcom, Magness, Romrell, Lamarche, van Oenen, Twitchin, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Lance, Paul, Independence Bank, Dobrich, Shoaib, Bank of America and Hill & Knowlton;

(g) Assisting Munther Ismael Bilbeisi (brother of a BCCI regional manager) through its Miami, Florida, operations to smuggle $35 million worth of coffee into the United States and sell it to U.S. buyers, in part through funds and false documents it made available, in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), 18 U.S.C. § 1956 (Laundering of Monetary Instruments), 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1983-1985. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/ Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Capcom, Lamarche, al-Mazrui, Hartmann, van Oenen, Twitchin and Shafi;

(h) Assisting now-deposed and arrested Panamanian dictator Noriega in looting that country's treasury and stealing its public monies by secretly transferring those funds out of Panama to Noriega's secret bank accounts located elsewhere, in part, via transfers through BCCI's U.S. agency offices and First American in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343

(Wire Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1985-1989. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/ Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Capcom, Magness, Romrell, Noriega, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann, Shafi, First American, Clifford, Altman, Scoffone, Beddow and Adams;

(i) Laundering the proceeds of illegal narcotics activities through its Miami, Florida, offices. Several BCCI operatives were convicted of these charges in United States District Court and BCCI pleaded guilty, paid a $15 million fine and was placed on probation for five years for violations of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), 18 U.S.C. § 1956 (Laundering of Monetary Instruments), 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity), 18 U.S.C. § 1961(1)(A) (Dealing in Narcotic or Other Dangerous Drugs Punishable Under Laws of U.S.) and 18 U.S.C. § 1961(1)(E) (Acts Indictable Under Currency and Foreign Transactions Reporting Act). These predicate acts occurred during 1984-1988. Along with BCCI, the defendants who directly participated in these predicate acts were Abu Dhabi, Abu Dhabi

Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Noriega, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann and Shafi;

(j) Making illegal political contributions in the United States, in substantial part through CenTrust's PAC, its officers, top customers and certain of their associates, as well as Goland and Viking Savings, in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud) and 18 U.S.C. § 1344 (Bank Fraud). These predicate acts occurred during 1985-1989. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Paul and Goland;

(k) Assisting Arif Durrani, a Pakistani weapons dealer, to illegally sell and ship (*i.e.*, smuggle) arms to Iran, for which Durrani has been convicted in United States District Court and sentenced to 10 years imprisonment, via letters of credit and monetary transfers from BCCI's Los Angeles, California, office in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises) and 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity). These predicate acts occurred during 1986. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts along with BCCI were Abu Dhabi, Abu Dhabi Investment/Finance,

Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Lamarche, al-Mazrui, Hartmann, van Oenen, Twitchin and Shafi;

(l) Undertaking to obtain and exercise political influence to hinder, halt, deflect or delay any investigation into their conduct in the United States or by U.S. law enforcement authorities and to prolong their conspiracy by hiring a phalanx of United States lobbyists and often paying them excessive fees, making huge and often illegal political contributions in the United States through, *inter alia*, CenTrust (as described above), Clifford and Altman, and having First American make large loans on generous terms to U.S. political figures through First American in violation of 18 U.S.C. § 201 (Bribery of Public Officials and Witnesses), 18 U.S.C. § 1341 (Mail Fraud) and 18 U.S.C. § 1343 (Wire Fraud). These predicate acts occurred during 1985-1990. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts along with BCCI were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Hill & Knowlton, Paul, Independence Bank, Dobrich, Shoaib, Goland and Bank of America;

(m) Circulating by mail and wire within and into the United States BCCI's false and misleading financial statements, as well as other false statements made by BCCI and its co-conspirators, to the effect that BCCI was not operating illegally in the United States, was well capitalized, had sufficient liquidity, was well-managed

and was working closely and cooperating with regulators, all in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud) and 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises). These predicate acts occurred during 1985-1991. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Price Waterhouse, Price Waterhouse/US, Price Waterhouse/UK, Price Waterhouse/Luxembourg, Ernst & Young, Ernst & Young/US, Ernst & Young/UK, Ernst & Young/Luxembourg, Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Independence Bank, Dobrich, Shoaib, Bank of America and Hill & Knowlton;

(n) By engaging in fraudulent sales of securities in the United States and deceptive and dishonest acts in connection with CenTrust's "selling" $150 million in subordinated debentures in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud) and 18 U.S.C. § 1961(1)(D) (Fraud in Sale of Securities). These predicate acts occurred during 1988. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Paul and Bank of America;

(o) By engaging in financial institution, bank, mail and wire fraud in the United States in helping to falsify CenTrust's apparent financial condition to avoid its regulatory seizure, keeping that bank operating for one or two more years and causing the United States government to spend hundreds of millions of dollars more to "bail out" that bank when it was finally seized, all in violation of 18 U.S.C. § 1341 (Mail Frauds), 18 U.S.C. § 1343 (Wire Fraud) and 18 U.S.C. § 1344 (Bank Fraud). These predicate acts occurred during 1986-1988. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann and Paul;

(p) Covering up its illegal activities in the United States by making repeated false statements denying BCCI's actual control of First American, CenTrust, NBG and Independence Bank, by arranging for a plea bargain in connection with a money-laundering plea in federal district court in Florida that could bar any further criminal prosecution of BCCI by federal authorities, and by lying to federal investigators and grand juries, paying off employees not to "blow the whistle" and advising one or more witnesses (*i.e.*, Amjad Awan) to leave this country to avoid giving testimony to federal law enforcement or investigating agencies in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 1503, *et seq.* (Obstruction of Justice), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), 18 U.S.C. § 201 (Bribery of Public Officials and Witnesses),

18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1975-1991. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Sheikh Adham, Khalil, Jawhary, al-Fulaij, Abedi, Naqvi, Iqbal, Awan, al-Mazrui, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Paul, Independence Bank, Dobrich, Shoaib, Goland, Bank of America and Hill & Knowlton;

(q) By helping its Los Angeles agency to funnel at least $3 million in illegal proceeds from an Orange County, California, telemarketing scheme out of the United States in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1985. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Pharaon, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann and Shafi;

(r) By illegally financing or attempting to finance the sale of French-manufactured military fighter aircraft owned by Argentina to third world countries,

including Saddam Hussein's Iraq, from its Miami, Florida, office, in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises) and 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity). These predicate acts occurred during 1989. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann and Shafi;

(s) By financing international terrorism, including financing and assisting the notorious ANO organization, financing the purchase, sale and delivery of illegal arms (including arms shipped to Saddam Hussein's Iraq) by Abu Nidal and some 10 others, including Samir Najmeddin, through some 42 accounts involving $50 million in BCCI's London Bank, all in violation of 18 U.S.C. § 1344 (Bank Fraud) and 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises). These predicate acts occurred during 1987. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts along with BCCI were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Lamarche, van Oenen, Twitchin and Shafi;

(t) By assisting the former President of Peru, Alan Garcia, to steal millions from his nation's treasury and funneling the money to secret accounts via the BCCI Bank systems in violation of 18 U.S.C. § 1341 (Mail

Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1987. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann and Shafi;

(u) By paying some $3 million in bribes to Peruvian bankers to obtain deposits from Peru's Central Bank in violation of 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1986-1987. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann and Shafi;

(v) By helping Munther Ismael Bilbeisi illegally sell Jordanian helicopters to Guatemala at inflated prices so that he could pay kickbacks to relatives of the President of Guatemala and certain high military officials in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of

Stolen Monies). These predicate acts occurred during 1987. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sh_ikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann and Shafi;

(w) Committing bank, financial institution, mail and wire fraud in the United States by illegally obtaining and maintaining control of four American banks, *i.e.*, First American, NBG, CenTrust and Independence Bank, through the use of secretly compensated nominees and the filing of false statements and reports with the FRB and other regulatory authorities, all in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises) and 18 U.S.C. § 201 (Bribery of Public Officials and Witnesses). These predicate acts occurred during 1975-1991. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Price Waterhouse, Price Waterhouse/US, Ernst & Young, Ernst & Young/US, Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Sheikh Adham, Khalil, Jawhary, al-Fulaij, Abedi, Naqvi, Iqbal, Awan, al-Mazrui, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Lance, Paul, Independence Bank, Dobrich, Shoaib, Goland, Bank of America and Hill & Knowlton;

(x) In 1988, purchasing (*i.e.*, "parking") some $35 million in junk bonds issued by CenTrust in the United States in order to artificially prop up its financial condition at a time when regulators were bearing down on it and threatening to close it. Those bonds were repurchased from the BCCI Banks and other straw parties by CenTrust at face value shortly after the regulators' inspection of CenTrust had been concluded. This transaction was undertaken in a deliberate effort to deceive American bank regulators and to help a fraudulently-operated savings and loan to stay open longer, which ultimately inflicted great damage on American taxpayers and constituted, *inter alia*, financial institution fraud, in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud) and 18 U.S.C. § 1961(1)(D) (Fraud in Sale of Securities). These predicate acts occurred during 1988. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann, Shafi, Paul and Bank of America;

(w) Causing First American to purchase Pharaon's interest in NBG (which was actually BCCI's interest) in 1985 at a grossly inflated and unfair price, thus funneling at least $220 million to the BCCI Banks, which monies were utilized by it to help cover up and perpetuate its ongoing fraud, all in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of

Stolen Monies). These predicate acts occurred during 1987. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Lance and Bank of America;

(z) Paying bribes to top officials of the Peruvian Central Bank in order to induce them to cause the government of Peru to place funds in the BCCI Banks and paying a $32 million bribe to the former manager of its investment activities in London in order to prevent him from exposing the ongoing fraud and criminal conduct ongoing at the BCCI Banks to a United States Senate Subcommittee, which payment was known to and approved by BCCI's then-auditors, Ernst & Young and/or Ernst & Young/UK, in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), 18 U.S.C. § 201 (Bribery of Public Officials and Witnesses), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1986-1987. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Ernst & Young, Ernst & Young/UK Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Capcom, Magness, Romrell,

Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann and Shafi;

(aa) Permitting the BCCI Banks' branches in Florida to engage in financing illegal narcotics transactions and to engage in money laundering transactions on behalf of drug dealers and then, when that activity was discovered by law enforcement officials, using its political influence to obstruct justice and obtain an improper plea bargain agreement which permitted it to pay a paltry $15 million fine, while securing an agreement from federal law enforcement officials which was grossly overbroad because it purported to commit the United States not ever to charge the BCCI Banks or their affiliates "with committing any other federal criminal offenses under investigation or known to the government at the time of the execution of this agreement or relating in any manner to the charges disposed of by the agreement," all in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), 18 U.S.C. § 1956 (Laundering of Monetary Instruments), 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity), 18 U.S.C. § 201 (Bribery of Public Officials and Witnesses), 18 U.S.C. § 2314 (Transportation of Stolen Monies), 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies), 18 U.S.C. § 1961(1)(A) (Dealing in Narcotic or Other Dangerous Drugs Punishable Under Laws of U.S.) and 18 U.S.C. § 1961(1)(E) (Acts Indictable Under Currency and Foreign Transactions Reporting Act). These predicate acts occurred in 1984-1989. The defendants who directly or

indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/ Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Noriega, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann, Shafi, First American, Clifford & Warnke, Clifford, Altman, Bank of America and Hill & Knowlton;

(ab) Manufacturing false documentation to facilitate inflation of account turnover and concealment of outflows of funds involving over 6,500 accounts during a 15-year period, including activities to hide over $600 million in deposits by treating them as unrecorded deposits, thus grossly distorting the Banks' financial statements and making hundreds of millions of dollars of fictitious loans, which were nothing more than transfers of money to BCCI insiders and those with whom those insiders had incestuous business and other relationships, all in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1976-1991. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Price Waterhouse, Price Waterhouse/US, Price Waterhouse/UK, Price Waterhouse/Luxembourg, Ernst & Young, Ernst & Young/US, Ernst & Young/UK, Ernst & Young/Luxembourg, Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Sheikh Adham, Khalil, Jawhary, al-Fulaij, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Lamarche, al-Mazrui, Hartmann, van Oenen, Twitchin and Shafi;

(ac) Acting as personal bankers for and engaging in illegal currency transactions and secret transfers of monies on behalf of Noriega and helping Noriega to loot Panama's national treasury through a series of transactions by which they permitted and assisted those parties to appropriate government monies for their own personal use, all in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1956 (Laundering of Monetary Instruments), 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity), 18 U.S.C. § 2314 (Transportation of Stolen Monies), 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies) and 18 U.S.C. § 1961(1)(E) (Acts Indictable Under Currency and Foreign Transactions Reporting Act). These predicate acts occurred during 1984-1989. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts along with BCCI were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Capcom, Magness, Romrell, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann and Shafi;

(ad) Stealing depositors' monies, including portions of the deposits belonging to U.S. residents and citizens, by permitting BCCI insiders and their friends, relatives and business associates to obtain huge loans that would never be repaid and, in some instances, simply taking the money, all in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful

Activity), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1975-1991. Along with BCCI, the defendants who directly and indirectly participated in these predicate acts were Price Waterhouse, Price Waterhouse/US, Price Waterhouse/UK, Price Waterhouse/Luxembourg, Ernst & Young, Ernst & Young/US, Ernst & Young/UK, Ernst & Young/Luxembourg, Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Sheikh Adham, Khalil, Jawhary, al-Fulaij, Abedi, Naqvi, Iqbal, Awan, al-Mazrui, Hartmann, Rizzi, Akbar, Ahmad, Capcom, Magness, Romrell, Lamarche, van Oenen, Twitchin, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Lance, Paul, Independence Bank, Dobrich, Shoaib, Goland, Bank of America and Hill & Knowlton;

(ae) Illegally accepting deposits in the United States from U.S. citizens and/or residents, in part with the help of Bank of America and First American, in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1985-1990. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/ Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Sheikh Adham, Khalil, Jawhary, al-Fulaij, Abedi, Naqvi, Iqbal, al-Mazrui, Hartmann, Lamarche, van Oenen,

Twitchin, Shafi, First American, Clifford, Altman, Scoffone, Beddow, Adams and Bank of America.

(af) Details of False and Misleading Statements Constituting Predicate Acts of Mail Fraud, Wire Fraud and Fraud in the Sale of Securities

A substantial part of the wrongdoing complained of herein consisted of the dissemination of false and misleading statements to the public made by BCCI, its officers, directors, lawyers and accountants in BCCI's annual and other periodic reports, press releases and other public statements, contained in BCCI's financial statements (including the certifications thereof by its auditors) and in filings with United States and other banking regulators relating to BCCI's financial condition, methods of operation, the nature of its operations in the United States and its control of First American, Independence Bank, NBG and CenTrust. The overall purpose and effect of these misstatements was to communicate to potential depositors, the financial community generally and regulators that BCCI was a financially strong, well-capitalized bank which was being operated in a conservative and prudent manner and in substantial compliance with applicable banking and other laws and had a good working relationship with banking regulators in various jurisdictions, including the United States.

(ag) The false narrative statements contained in BCCI's 1986, 1987, 1988 and 1989 annual reports are specified in ¶¶297-306 hereof and the false and misleading portions of those annual reports are quoted in those paragraphs. Copies of those reports are attached as Exhibit 4 hereto and a review of each report will indicate

which individual defendant made each of those false statements. The statements contained in those annual reports were affirmatively false and misleading in their own right and each of those statements and the annual reports as a whole were also false and misleading in failing to disclose the material adverse information about BCCI, its finances and the nature of its operations as detailed in ¶291(a)-(ao) hereof.

(ah) Thousands of copies of those annual reports were printed and distributed by BCCI each year, beginning as soon as the auditor's certification of the prior year's financial statements could be obtained, hence, the BCCI annual report for 1986 was printed and distributed beginning in the Spring of 1987 and so on for each year. Each annual report was distributed by BCCI in a widespread manner to the financial press, throughout the financial community and banking community and were also distributed at each of its offices (including its agency offices located in the United States) and copies were given to potential and existing BCCI depositors, as well as to regulators in the various jurisdictions where BCCI was operating throughout the succeeding year, including the United States. In addition to BCCI, the persons having a duty to make true and complete disclosure of material information in these BCCI annual reports included Price Waterhouse, Price Waterhouse/US, Price Waterhouse/UK, Price Waterhouse/Luxembourg, Ernst & Young, Ernst & Young/US, Ernst & Young/UK, Ernst & Young/Luxembourg, Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Abedi, Naqvi, Iqbal, Awan, al-Mazrui, Hartmann, Rizzi, Akbar, Ahmad, Lamarche, van

Oenen, Twitchin, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Shoaib, Bank of America and Hill & Knowlton.

(ai) The accounting firm defendants had a duty of true and complete disclosure because they were each associated with BCCI's annual reports because to the inclusion of their opinions on or certifications of the financial statements in those annual reports and they knew of the existence of the adverse material facts particularized in ¶291(a)-(ao) hereof. These defendants knew that the existence of those facts made the affirmative representations contained in the annual reports and specified in ¶¶297-306 hereof false and misleading. The Abu Dhabi defendants, Pharaon (and his controlled alter ego entities), BCCI's officers and directors and the Bank of America were each in a position to control BCCI when these false annual reports were issued and each was aware of the material adverse facts specified in ¶291(a)-(ao) hereof and that they made the positive statements in annual reports specified in ¶¶297-306 hereof false and misleading. Defendants Abedi, Naqvi, Iqbal, Awan, al-Mazuri, Hartmann, Rizzi, Shoaib, Akbar, Ahmad, Lamarche, van Oenen, Twitchin and Shafi were BCCI's officers or directors when these annual reports were issued and each had knowledge of the material adverse information about BCCI specified in ¶291(a)-(ao) hereof and knew that those facts made the positive statements about BCCI contained in the annual reports and specified in ¶¶297-306 hereof false and misleading. Defendants First American, Clifford & Warnke, Clifford, Altman, Beddow and Adams were also aware of the issuance of the BCCI annual reports, the adverse material

facts about BCCI specified in ¶291(a)-(ao) hereof and knew that those facts made the positive assertions about BCCI contained in those annual reports and specified in ¶¶297-306 hereof false and misleading. Each of these above-named defendants was in a position to prevent the circulation of the false and misleading BCCI annual reports, or to cause the disclosure of information which would have exposed their false and misleading nature.

(aj) BCCI's 1986, 1987, 1988 and 1989 annual reports also contained BCCI's annual financial statements for each of those years. In addition, BCCI's annual financial statements were also distributed in a free-standing manner, examples of which are set forth in Exhibit 3 hereto. These financial statements were distributed by BCCI in the same manner as BCCI's annual reports, as described above. BCCI's annual financial statements, as contained in BCCI's annual reports and as distributed on a free-standing basis, contained opinions in the name of Ernst & Young for the year 1986 and Price Waterhouse for the years 1987, 1988 and 1989. The text of those opinions, which were false and misleading when issued, are set forth in ¶¶298, 300, 303 and 306 hereof and appear in Exhibits 3 and 4 hereto. These opinions on or certifications of BCCI's financial statements were distributed in the same manner and in the same way to the same persons and at the same times as BCCI's annual reports. These financial statement certifications were false and misleading due to the failure to disclose material adverse facts concerning BCCI's finances and methods of operation which were then known by Ernst & Young, Ernst & Young/UK, Ernst & Young/US and Ernst & Young/Luxembourg at the time of their certification of BCCI's 1986

financial statements in the name of Ernst & Young and with respect to Price Waterhouse and Price Waterhouse/UK, Price Waterhouse/US and Price Waterhouse/Luxembourg and its certification of BCCI's 1987, 1988 and 1989 financial statements in the name of Price Waterhouse as specified in ¶291(a)-(ao) hereof and also for the reasons specified in ¶308 hereof.

(ak) In addition to its annual reports, which BCCI prepared and distributed widely on an annual basis, BCCI also prepared and disseminated in a similar fashion other literature providing information about its financial condition and the nature of its operations. An example of such material is contained in Exhibit 5, which was widely disseminated by BCCI in the countries where it operated, including in and through its United States agency offices, during 1985. The false and misleading narrative portion of that pamphlet is specified in ¶296 hereof. The financial statements contained therein were false for the same reason BCCI's 1986 financial statements were false and misleading, as specified above.

(al) Throughout the 1980's, BCCI's top officers also issued statements to the financial press, many of which were distributed by mail or wire, which were publicly reported to the effect that BCCI was operating in a lawful manner, was conservatively managed and was well-capitalized. An example of such statements, this one made in 1988 by Abedi, is quoted in ¶296 hereof and which was false due to the failure to disclose the negative adverse information about BCCI known to Abedi as specified in ¶291(a)-(ao), which Abedi had a duty to disclose due to his position with BCCI and his knowledge of those adverse facts.

(am) Each time BCCI secretly acquired control of a bank located in the United States, it and certain defendants who were cooperating with it filed by mail false applications, reports, forms and other documents with federal banking regulators to make it appear that other persons (*e.g.*, Pharaon, Adham, Khalil, Jawhary, al-Fulaij, CCHA and other defendants) were acquiring control of those banks. Section 3(a) of the BHC Act, 12 U.S.C. § 1842(a), makes it unlawful for any company to own or control, directly or indirectly or acting through one or more other persons, 25% or more of the voting shares of a bank, or for any bank holding company to acquire direct or indirect ownership or control of more than 5% of the voting shares of any bank without the prior approval of the FRB Board of Governors. In acting on applications for approval under § 3(a), the Board considers the financial and managerial resources of the companies and banks concerned, as well as the activities of the applicant company under the BHC Act and the IB Act. *See* 12 U.S.C. §§ 1842(c) and 3106(c). BCCI violated § 3(a) of the BHC Act in connection with its acquisition of First American, Independence Bank, CenTrust and NBG by mailing false acquisition applications and documentation, which disguised and concealed its ownership or control of over 50% of the voting shares of each of these banks.

(an) Section 5(c) of the BHC Act, 12 U.S.C. § 1844(v)(c), § 8(a) of the IB Act, 12 U.S.C. § 3106(a), and § 225.5 of Regulation Y, 12 C.F.R. § 225.5, require bank holding companies and foreign banks with U.S. branches or agencies and their parent companies to submit periodic reports to the FRB, including quarterly, semi-annual and yearly reports on Forms Y-6, Y-7 and Y-9. In part,

these reports require the disclosure of a bank holding company's interests in its subsidiaries. In each filing after the date of its acquisition of control of First American, Independence Bank, CenTrust and NBG and until late 1991, in violation of § 5(c) of the BHC Act, § 8(a) of the IB Act, and § 225.5 of Regulation Y, BCCI submitted, by mail, false and misleading reports on Form Y-7 because it never disclosed its interest in and control of Independence Bank in any required regulatory filing with the FRB. The defendants who were responsible for those filings, participated in their preparation and knew them to be false included Abu Dhabi, Abu Dhabi Investment/ Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Sheikh Adham, Khalil, Jawhary, al-Fulaij, Abedi, Naqvi, Iqbal, Awan, al-Mazuri, Hartmann, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Lance, Paul, Independence Bank, Dobrich, Shoaib, Goland and Bank of America.

(ao) More details of the false and misleading statements sent by mail and/or interstate wire facilities by certain of the defendants herein with respect to each of these illegal acquisitions is set forth in detail in certain of the Exhibits hereto, which are specifically incorporated by reference herein:

(i) *First American Bank Acquisition*: The details of the false and misleading statements made to the FRB by BCCI, Altman, Clifford and Clifford & Warnke in connection with the First American acquisition are detailed in ¶¶54-193 hereof and in the indicated Exhibits hereto:

United States v. BCCI, No. 91-0655-Superseding Information (Exhibit 11), pages 24-25 and 37-40; and

In re BCCI, et al., Federal Reserve No. 91-043, *et seq.* (Exhibit 20), pages 9-67;

(ii) *Independence Bank Acquisition*: The details of false and misleading statements made by Pharaon, Shoaib and Dobrich in connection with the Independence Bank acquisition are detailed in ¶¶243-282 hereof and in the indicated Exhibits hereto, which are specifically incorporated by reference herein:

United States v. BCCI, No. 91-0655-Original Indictment (Exhibit 10), pages 9-17 and 25-27;

United States v. BCCI, No. 91-0655-Superseding Information (Exhibit 11), pages 16-18 and 40-46;

In re Pharaon, et al., Federal Reserve No. 91-0370 (Exhibit 19), pages 6-27;

Federal Reserve v. Pharaon, 91-Civ. 6250 (PKL) (S.D.N.Y. 1991) Complaint (Exhibit 17), pages 3-6, plus Exhibit A thereto, pages 4-9 (and Exhibits thereto); and

Federal Reserve v. Shoaib, Case No. CV 91-5152 DWW (C.D. Cal. 1991) (Exhibit 18), pages 3-8, plus attached Declaration;

(iii) *CenTrust Bank Acquisition; Securities Fraud and Illegal Political Contributions*: The details of the false and misleading statements made by Pharaon, Paul and others in connection with the CenTrust acquisition are detailed in ¶¶216-225 hereof, while details of the false and misleading statements made in connection with the CenTrust securities fraud scheme are specified in ¶¶226

and 231-240 hereof and in the indicated Exhibits hereto, which are incorporated by reference herein:

> *United States v. BCCI*, No. 91-0655-Original Indictment (Exhibit 10), pages 17-20 and 28-29;
>
> *United States v. BCCI*, No. 91-0655-Superseding Information (Exhibit 11), pages 18-21 and 46-49; and
>
> *In re BCCI, et al.*, Federal Reserve No. 91-043, *et seq.* (Exhibit 20), pages 76-77;

Further details as to the false and misleading statements made in connection with the CenTrust acquisition and debenture transaction and its illegal political contributions are set forth in the Senate Judiciary Subcommittee on Antitrust, Monopolies and Business Rights, attached as Exhibit 37 hereto.

(iv) *NBG Acquisition*: The details of false and misleading statements made by defendants in connection with the NBG acquisition are detailed in ¶¶194-215 hereof and in the indicated Exhibits, which are specifically incorporated herein by reference:

> *United States v. BCCI*, No. 91-0655-Superseding Information (Exhibit 11), pages 22-24 and 31-37; and
>
> *In re BCCI, et al.*, Federal Reserve No. 91-043, *et seq.* (Exhibit 20), pages 68-75;

(ap) After BCCI had secretly obtained illegal control of these banks, it was necessary for those individuals who were in control of or representing those banks to file annual reports with the FRB or other federal banking regulators on an annual basis, which reports when

filed were false and misleading because they misrepresented the actual ownership and control of those banks and failed to disclose that BCCI was, in fact, the controlling owner of each of those banks. These periodic reports on Forms Y-6 or Y-7 were prepared by the top managements of each of the banks in question and were filed with the appropriate government agency in the spring of each year. A list of the annual filings made by First American and CCHA with the FRB which were false and misleading in concealing BCCI's illegal control of these entities is set forth in Exhibit 39 hereto and are specifically incorporated by reference herein. The actual filings are available from the FRB and will reveal which defendants signed which false filing.

(aq) Because of its operation of agency offices in the United States, BCCI was also required to file periodic reports with the FRB, including a "Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks," on a quarterly basis and a "Report of a Foreign Banking Organization" on Form Y-7 on an annual basis. Examples of these reports are attached as Exhibits 33 and 34 hereto and are specifically incorporated herein by reference.

(ar) BCCI filed its quarterly and annual reports with the FRB for each of the years above specified by mail. The Annual Reports each contained BCCI's financial statements and the auditor's opinion thereon, which were false for the same reasons set forth above. Each of these reports also misrepresented that BCCI was not doing business in the United States directly through branch offices, did not control more than 5% of any United States bank and concealed its illegal acceptance of

deposits from U.S. citizens through its agency offices here. The defendants who were involved in BCCI's filing of these false reports with the FRB included Price Waterhouse, Price Waterhouse/US, Price Waterhouse/ UK, Price Waterhouse/Luxembourg, Ernst & Young, Ernst & Young/US, Ernst & Young/UK, Ernst & Young/Luxembourg, Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Abedi, Naqvi, Iqbal, Awan, al-Mazuri, Hartmann, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, Shafi, First American, Clifford & Warnke, Clifford, Altman and Bank of America.

(as) Defendants also engaged in securities, mail and wire fraud relating to transactions in CenTrust debentures, as detailed in ¶226 hereof. In addition, the details of the predicate acts committed in furtherance of that scheme, including the specific dates of illegal acts, false mailings, and the like, are set forth in the indicated Exhibits hereto, which are specifically incorporated by reference herein:

> *United States v. BCCI*, No. 91-0655-Original Indictment (Exhibit 10), pages 17-20 and 28-29;
>
> *United States v. BCCI*, No. 91-0655-Superseding Information (Exhibit 11), pages 18-21 and 46-49;
>
> *In re BCCI, et al.*, Federal Reserve, No. 91-043, *et seq.* (Exhibit 20), pages 76-77;

349. (a) In violation of §§ 1962(c) and (d) of RICO, defendants conspired to conduct and/or participate, directly or indirectly, in the conduct of the affairs of BCCI and/or the BCCI Banks and/or the association-in-fact enterprise, and/or conducted and participated, directly

or indirectly, in the conduct of the affairs of such enterprises through the above-referenced pattern of racketeering activity.

(b) The following defendants were employed by the BCCI enterprise and/or the association-in-fact enterprise: Price Waterhouse, Price Waterhouse/US, Price Waterhouse/UK, Price Waterhouse/Luxembourg, Ernst & Young (successor to Ernst & Whinney), Ernst & Young/US, Ernst & Young/UK, Ernst & Young/Luxembourg, Capcom, Lamarche, van Oenen, Twitchin, Shafi, Abedi, Naqvi, Iqbal, Awan, al-Mazrui, Rizzi, Akbar, Clifford & Warnke, Clifford, Altman, the other partners of Clifford & Warnke named as defendants herein, Scoffone, Beddow, Adams, Lance, Paul, Dobrich, Shoaib, Goland and Hill & Knowlton.

(c) The following defendants were associated with the BCCI enterprise and/or the association-in-fact enterprise: each defendant listed in ¶349(b), as well as Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed al-Nahayan, Pharaon and the various Pharaon entities (*i.e.*, the InterRedec Defendants) Adham, Khalil, Jawhary, al-Fulaij, Noriega, First American, Independence Bank, Bank of America, Magnes and Romrell.

(d) Plaintiffs further allege that the same entity is *not* both the liable person(s) and the enterprise under § 1962(c).

(e) Description of Conspiracy

Defendants Naqvi, Abedi and Bank of America commenced a conspiracy beginning on a date before January 1, 1972, which was later joined in by other defendants

and they pursued that conspiracy until at least July, 1991, when the BCCI Banks were seized by United States and other nations' regulators. The essence of the conspiracy was to start, purchase and/or obtain control of banks and thereby obtain access to deposits which would then be used for illegal purposes, stolen, diverted, or used to benefit BCCI insiders, their relatives and their business associates, in part by convincing depositors, regulators and other banking and financial institutions, by means of false representations and false information, that BCCI was operating lawfully and that it was a safe financial repository and institution for funds, thereby persuading depositors and banking and other financial institutions to provide the BCCI Banks with deposits and credit. In addition to obtaining money (deposits) from persons and to use that money to benefit the participants in the conspiracy, their families, friends and business associations, the purpose of the conspiracy was to finance a wide range of illegal but highly profitable activities worldwide, thereby generating additional monies for the benefit of BCCI insiders. Upon obtaining billions in deposits and other monies, the BCCI insider defendants could then steal, waste, or misuse the money or divert such funds by huge expenditures to benefit themselves and make unauthorized transfers and "loans" which they knew would never be repaid.

(f) Defendants carried out their conspiracy and common course of conduct by, *inter alia*, issuing false and misleading statements and filings with the United States and other government agencies, including the issuance of a series of false and misleading BCCI annual and other periodic reports, financial statements and other public

statements and releases, bribery of government officials and others, mail fraud, wire fraud, financial institution fraud, fraud in the sale of securities, obstruction of justice, dealing in narcotic or dangerous drugs, monetary transactions in property derived from unlawful activity and violations of the Currency and Foreign Transaction Reporting Act. These illegal acts in furtherance of the conspiracy are detailed in ¶¶10, 340, 348 and 356 hereto, as well as in Exhibits 6-21, which are incorporated herein by reference.

(g) As the conspiracy operated from 1972 forward, various defendants entered the ongoing conspiracy to perform important acts to further the conspiracy and to benefit from it. Each defendant was a direct, necessary and substantial participant in the conspiracy and pattern of racketeering activity complained of herein. Defendants Abedi, Naqvi, Bank of America and the other early stockholders of BCCI set out to form a huge international bank which, by appearing to be a growing, profitable enterprise operating in a lawful manner, would attract billions of dollars of deposits from all over the world which they would then be able to misuse and/or divert to benefit themselves, other BCCI insiders and their allies while continuing to expand the BCCI's operation. A key part of the conspiracy was to headquarter BCCI in secrecy jurisdictions, thus avoiding regulation or oversight by any major central bank or the regulators of any one major industrialized nation. In order to achieve this plan, especially the worldwide growth of BCCI and the secret and illegal infiltration of the United States banking system, it was necessary for BCCI, Abedi, Naqvi and the other BCCI insiders to secure the assistance of certain nominees

or strawmen to front for them in BCCI's illegal acquisitions of United States banks, *i.e.*, Adham, Khalil, Jawhary, Iqbal, al-Mazrui and others who would help them siphon off BCCI's assets, *i.e.*, Awan, Rizzi, Akbar, Capcom, Magness and Romrell. When BCCI's phony loans to its nominees/strawmen who would buy United States banks for it could not be serviced and this threatened to cause the conspiracy to unravel, the Abu Dhabi defendants increased their ownership interest in BCCI so that it could continue to operate and the prior wrongdoing described herein would not be exposed. The conspirators also needed the ongoing cooperation and assistance of other persons (*i.e.*, Lance, Paul and Goland), including professionals who would help it falsify BCCI's apparent financial condition, profitability and ability to repay depositors and would help conceal the illegal nature of its operations and permit it to infiltrate the U.S. banking system by, *inter alia*, lying to bank regulators. To this end, defendants recruited the Price Waterhouse defendants and Ernst & Young defendants and induced them to join the conspiracy; the latter actively assisted the conspiracy by providing BCCI with the certifications of its false financial statements, which were indispensable to BCCI's operations. To this end, they also recruited Clifford & Warnke, Clifford and Altman to participate in the conspiracy by helping BCCI secretly obtain control of United States banks. To assist in siphoning off depositors' funds, Capcom was formed and with the help of Magness and Romrell, was used by BCCI insiders to divert depositors' monies for the benefit of BCCI insiders and/or strawmen or nominees, principally through bogus foreign currency or gold bullion transactions. When rumors and adverse

news articles and publicity threatened to expose BCCI's illegal control of First American, Hill & Knowlton entered the conspiracy and agreed to circulate false and misleading information in the United States discrediting those accusations.

(h) In summary, the conspiracy was a complex and lengthy one in which participants played diverse but indispensable roles. Over time some defendants left the conspiracy, but they never revealed their knowledge of or participation in the wrongdoing. The overall goal of the conspiracy was to create and then maintain the appearance that BCCI was a huge international bank which was operating in a lawful and profitable manner while it obtained billions of dollars in deposits from individuals and business located all over the world so that those deposits could be misused and/or diverted to help continue the operation of the BCCI criminal enterprise and reward those individuals, professionals and firms who were playing an important role in helping that conspiracy continue to function.

350. (a) As a direct and proximate result of defendants' violations of §§ 1962(c) and (d) of RICO, plaintiffs and the members of the class have been injured in their business or property. Due to BCCI's false financial statements and its other false statements about the conservative and lawful nature of its operations BCCI was able to continue to operate and obtain deposits which were then wasted, misused or siphoned off by BCCI's insiders, with the help of the other defendants. Due to BCCI's criminal activities becoming known to United States and other government regulators, in July, 1991, these regulators seized BCCI and shut it down, thus halting its "Ponzi

operation," which resulted in depositors losing access to their deposits, and they will ultimately recover no more than 25% of their money. Under the provisions of § 1964(c) of RICO, plaintiffs and the members of the class are entitled to bring this action and to recover herein treble damages, the costs of bringing this suit and attorneys' fees.

(b) Causal Relationship Between Plaintiffs' Alleged Injury and Defendants' Violations of Section 1962(c) and (d)

Each plaintiff and member of the class was injured in their business or property when the BCCI criminal enterprise or the association-in-fact enterprise obtained their money deposited in BCCI, which was made possible only by BCCI's false representations regarding its substantial assets, profitability, lawful operations and ability to honor depositors' claims, which would not have been possible had defendants not assisted in the continued operation of the BCCI or association-in-fact enterprise or revealed the true state of affairs about BCCI's finances, operations or the conduct of its business. BCCI depositors lost access to all of their deposits and lost a significant amount of those deposits forever when United States regulators determined that BCCI was operating illegally in this country by illegally controlling the operations of First American, CenTrust and Independence Bank, and in participating in predicate acts, such as financing drug dealers, arms merchants and engaging in money laundering in or affecting this country, and persuaded banking regulators in the United Kingdom, Luxembourg and other locations to cooperate with U.S. regulators in seizing BCCI, taking control of its operations and freezing its

depositors' funds. Because BCCI had been operating as a "Ponzi scheme" with grossly overstated assets, it did not have the monies required to cover depositors' claims, thus the BCCI depositors lost approximately 70%-90% of the face amount of their deposits plus interest accrued thereon subsequent to the date of seizure.

(c) In violation of 18 U.S.C. § 1962(c) and (d), defendants First American, Beddow, Scoffone, Adams, Independence Bank, Shoaib, Dobrich, Ernst & Young, Ernst & Young/UK, Ernst & Young/US and Ernst & Young/Luxembourg, Price Waterhouse, Price Waterhouse/UK, Price Waterhouse/US and Price Waterhouse/Luxembourg, Clifford & Warnke, Clifford, Altman, Hill & Knowlton, Goland, the Abu Dhabi defendants, Lance, Paul, Capcom, Magness, Romrell, Lamarche, van Oenen, Twitchin, Shafri, Bank of America, Pharaon (and his contolled alter ego entities), Adham, Khalil, Jawhary, al-Fulaij, Abedi, Naqvi, Iqbal, Awan, al-Mazrui, Rizzi and Akbar were employed by or associated with BCCI and/or the association-in-fact enterprise and directly or indirectly conducted and/or participated in the conduct of the affairs of the BCCI and/or association-in-fact enterprise.

(d) By reason of the conspiracy and each defendant's aiding and abetting pattern of racketeering activity detailed herein, each plaintiff and member of the class was thus defrauded into placing his, her, or its deposit into a criminal enterprise instead of into a legitimate bank and their deposits were thus placed into an ongoing "Ponzi scheme," whereby they were used to finance the continuing operations of the BCCI criminal enterprise and/or were misused or diverted for improper and illegal purposes, or were used for the benefit of BCCI

insiders and their co-conspirators named as defendants herein. Each plaintiff and each member of the class lost access to his, her, or its deposits in BCCI in July, 1991, when U.S. government officials and elsewhere uncovered BCCI's ongoing illegal activities of BCCI and its prior misrepresentations to U.S. regulators, including its illegal infiltration of the United States banking system, and seized BCCI, halting its ongoing operations including the honoring of any deposits. Instead of having almost $15 billion in assets as previously represented, BCCI has net assets to cover depositors' accounts of less than $1.5 billion, which amount will be further eroded as the result of the operations of BCCI's liquidation estate. Plaintiffs will not receive more than 25% of their deposits (assuming the controlling stockholder of BCCI contributes $2.3 billion to the liquidation estate, which it is not certain he will do), which amount plaintiffs will receive at an indefinite time in the future, thus having lost and suffered damages to their property or business amounting to at least 75% of their deposits, plus interest, since July, 1991. Had these defendants not aided and abetted in and/or conspired to advance the operations of the BCCI conspiracy, BCCI would have been seized years earlier and would not have been able to obtain and/or retain plaintiffs' deposits and thereby injure them in their business or property.

(e) Description of Causal Relationship Between Plaintiffs' Alleged Injury and the RICO Predicate Acts

The causal relationship between the specific RICO predicate acts participated in by the defendants indicated and plaintiffs' injuries is set forth below:

(f) Illegally obtaining and maintaining control for BCCI of NBG, First American, CenTrust and Independence Bank in the United States by lying to the FRB and other federal banking agencies in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud) and 18 U.S.C. § 1344 (Bank Fraud). With respect to each illegal acquisition, these predicate acts occurred during the time periods indicated NBG (1975-1991); First American (1978-1991); CenTrust (1985-1991); and Independence Bank (1985-1991). Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Price Waterhouse, Price Waterhouse/US, Price Waterhouse/UK, Price Waterhouse/Luxembourg, Ernst & Young, Ernst & Young/US, Ernst & Young/UK, Ernst & Young/Luxembourg, Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon-controlled entities), Sheikh Adham, Khalil, Jawhary, al-Fulaij, Abedi, Naqvi, Iqbal, al-Mazrui, Lamarche, van Oenen, Twitchin, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Lance, Paul, Independence Bank, Dobrich, Shoaib and Bank of America. These predicate acts caused plaintiffs' injury in the following manner: Each plaintiff and each member of the class was injured when the BCCI criminal enterprise and/or the association-in-fact enterprise obtained their money deposited in BCCI, which was made possible only by BCCI's false representations of its substantial assets, profitability, lawful operation and ability to honor depositors' claims and which would not have

been possible had defendants not assisted in the continued operation of the BCCI and/or association-in-fact enterprise or revealed the true state of affairs about BCCI's finances, operations or conduct of its business. BCCI depositors lost access to all of their deposits and lost access to a significant amount of those deposits forever when U.S. regulators determined that BCCI was operating illegally in this country by participating in RICO predicate acts, such the illegal activities set forth above, and persuaded banking regulators in the United Kingdom, Luxembourg and other locations to cooperate with U.S. regulators in seizing BCCI, taking control of its operations and freezing its depositors' funds. Because BCCI had been operating as a "Ponzi scheme" with grossly overstated assets, it did not have the monies required to cover depositors' claims, thus the BCCI depositors have lost approximately 70%-90% of the face amount of their deposits, plus interest accrued thereon subsequent to the date of seizure, and each has suffered injury in his, her, or its business or property. By participating in the predicate acts specified herein, the defendants helped the BCCI criminal enterprise to continue to operate and aided and abetted or conspired with the BCCI enterprise. BCCI would not have been able to continue its illegal operations and, thus, would not have been able to obtain plaintiffs' deposits when it did and plaintiffs' deposits would not have been lost by reason of the subsequent seizure of BCCI by United States and other regulators, had these and other predicate acts not occurred. Each plaintiff was thus defrauded into placing his, her, or its money into a criminal enterprise instead of into a legitimate bank. Their deposits were thus placed

into an ongoing "Ponzi scheme" and they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were they misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein.

(g) Using its United States agency offices to finance illegal drug transactions committed by Pablo Escobar and Jorge Ochoa, leaders of the Medellin drug cartel, including transactions involving the illegal transportation of narcotics into the United States in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), 18 U.S.C. § 1956 (Laundering of Monetary Instruments), 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity) and 18 U.S.C. § 1961(1)(A) (Dealing in Narcotic or Other Dangerous Drugs Punishable Under Laws of U.S.). These predicate acts occurred during 1985-1990. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Capcom, Magness, Romrell, Noriega, Lamarche, van Oenen, al-Mazrui, Hartmann, Twitchin, Shafi and Bank of America. These predicate acts caused plaintiffs' injury in the following manner: Each plaintiff and each member of the class was injured when the BCCI criminal enterprise and/or the association-in-fact enterprise obtained their money deposited in BCCI, which was made possible only by BCCI's false representations of its substantial assets,

profitability, lawful operation and ability to honor depositors' claims and which would not have been possible had defendants not assisted in the continued operation of the BCCI and/or association-in-fact enterprise or revealed the true state of affairs about BCCI's finances, operations or conduct of its business. BCCI depositors lost access to all of their deposits and lost access to a significant amount of those deposits forever when U.S. regulators determined that BCCI was operating illegally in this country by participating in RICO predicate acts, such as the illegal activities set forth above, and persuaded banking regulators in the United Kingdom, Luxembourg and other locations to cooperate with U.S. regulators in seizing BCCI, taking control of its operations and freezing its depositors' funds. Because BCCI had been operating as a "Ponzi scheme" with grossly overstated assets, it did not have the monies required to cover depositors' claims, thus the BCCI depositors have lost approximately 70%-90% of the face amount of their deposits, plus interest accrued thereon subsequent to the date of seizure, and each has suffered injury in his, her, or its business or property. By participating in the predicate acts specified herein, the defendants helped the BCCI criminal enterprise to continue to operate and aided and abetted or conspired with the BCCI enterprise. BCCI would not have been able to continue its illegal operations and, thus, would not have been able to obtain plaintiffs' deposits when it did and plaintiffs' deposits would not have been lost by reason of the subsequent seizure of BCCI by United States and other regulators, had these and other predicate acts not occurred. Each plaintiff was thus defrauded into placing his, her, or its money into a

criminal enterprise instead of into a legitimate bank. Their deposits were thus placed into an ongoing "Ponzi scheme" and they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were they misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein.

(h) Misusing for illegal purposes and/or stealing (*i.e.*, siphoning off) the BCCI Banks' deposits, including portions of the deposits of U.S. residents and citizens, portions of which had been obtained in the United States and diverted portions of which were, in part, used in this country to finance BCCI's illegal infiltration of the United States banking system, to pay off Clifford and Altman and to make payments to obstruct United States justice in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), 18 U.S.C. § 201 (Bribery of Public Officials and Witnesses), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1975-1991. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts along with BCCI were Price Waterhouse, Price Waterhouse/US, Price Waterhouse/UK, Price Waterhouse/Luxembourg, Ernst & Young, Ernst & Young/US, Ernst & Young/UK, Ernst & Young/Luxembourg, Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Sheikh Adham, Khalil, Jawhary, al-Fulaij, Abedi, Naqvi, Iqbal, Awan, al-Mazrui, Rizzi, Akbar, Ahmad,

Capcom, Magness, Romrell, Lamarche, van Oenen, Twitchin, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Lance, Paul, Independence Bank, Dobrich, Shoaib, Bank of America and Hill & Knowlton. These predicate acts caused plaintiffs' injury in the following manner: Each plaintiff and each member of the class was injured when the BCCI criminal enterprise and/or the association-in-fact enterprise obtained their money deposited in BCCI, which was made possible only by BCCI's false representations of its substantial assets, profitability, lawful operation and ability to honor depositors' claims and which would not have been possible had defendants not assisted in the continued operation of the BCCI and/or association-in-fact enterprise or revealed the true state of affairs about BCCI's finances, operations or conduct of its business. BCCI depositors lost access to all of their deposits and lost access to a significant amount of those deposits forever when U.S. regulators determined that BCCI was operating illegally in this country by participating in RICO predicate acts, such as the illegal activities set forth above, and persuaded banking regulators in the United Kingdom, Luxembourg and other locations to cooperate with U.S. regulators in seizing BCCI, taking control of its operations and freezing its depositors' funds. Because BCCI had been operating as a "Ponzi scheme" with grossly overstated assets, it did not have the monies required to cover depositors' claims, thus the BCCI depositors have lost approximately 70%-90% of the face amount of their deposits, plus interest accrued thereon subsequent to the date of seizure, and each has suffered

injury in his, her, or its business or property. By participating in the predicate acts specified herein, the defendants helped the BCCI criminal enterprise to continue to operate and aided and abetted or conspired with the BCCI enterprise. BCCI would not have been able to continue its illegal operations and, thus, would not have been able to obtain plaintiffs' deposits when it did and plaintiffs' deposits would not have been lost by reason of the subsequent seizure of BCCI by United States and other regulators, had these and other predicate acts not occurred. Each plaintiff was thus defrauded into placing his, her, or its money into a criminal enterprise instead of into a legitimate bank. Their deposits were thus placed into an ongoing "Ponzi scheme" and they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were they misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein.

(i) Assisting Munther Ismael Bilbeisi (brother of a BCCI regional manager) through its Miami, Florida, operations to smuggle $35 million worth of coffee into the United States and sell it to U.S. buyers, in part through funds and false documents it made available, in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), 18 U.S.C. § 1956 (Laundering of Monetary Instruments), 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1983-1985. Along with

BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/ Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Capcom, Lamarche, al-Mazrui, Hartmann, van Oenen, Twitchin and Shafi. These predicate acts caused plaintiffs' injury in the following manner: Each plaintiff and each member of the class was injured when the BCCI criminal enterprise and/or the association-in-fact enterprise obtained their money deposited in BCCI, which was made possible only by BCCI's false representations of its substantial assets, profitability, lawful operation and ability to honor depositors' claims and which would not have been possible had defendants not assisted in the continued operation of the BCCI and/or association-in-fact enterprise or revealed the true state of affairs about BCCI's finances, operations or conduct of its business. BCCI depositors lost access to all of their deposits and lost access to a significant amount of those deposits forever when U.S. regulators determined that BCCI was operating illegally in this country by participating in RICO predicate acts, such the illegal activities set forth above, and persuaded banking regulators in the United Kingdom, Luxembourg and other locations to cooperate with U.S. regulators in seizing BCCI, taking control of its operations and freezing its depositors' funds. Because BCCI had been operating as a "Ponzi scheme" with grossly overstated assets, it did not have the monies required to cover depositors' claims, thus the BCCI depositors have lost approximately 70%-90% of the face amount of their deposits, plus interest accrued thereon subsequent to the date of seizure, and each has suffered injury in his, her, or its business or

property. By participating in the predicate acts specified herein, the defendants helped the BCCI criminal enterprise to continue to operate and aided and abetted or conspired with the BCCI enterprise. BCCI would not have been able to continue its illegal operations and, thus, would not have been able to obtain plaintiffs' deposits when it did and plaintiffs' deposits would not have been lost by reason of the subsequent seizure of BCCI by United States and other regulators, had these and other predicate acts not occurred. Each plaintiff was thus defrauded into placing his, her, or its money into a criminal enterprise instead of into a legitimate bank. Their deposits were thus placed into an ongoing "Ponzi scheme" and they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were they misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein.

(j) Assisting now-deposed and arrested Panamanian dictator Noriega in looting that country's treasury and stealing its public monies by secretly transferring those funds out of Panama to Noriega's secret bank accounts located elsewhere, in part, via transfers through BCCI's U.S. agency offices and First American in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1985-1989.

Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/ Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Capcom, Magness, Romrell, Noriega, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann, Shafi, First American, Clifford, Altman, Scoffone, Beddow and Adams. These predicate acts caused plaintiffs' injury in the following manner: Each plaintiff and each member of the class was injured when the BCCI criminal enterprise and/or the association-in-fact enterprise obtained their money deposited in BCCI, which was made possible only by BCCI's false representations of its substantial assets, profitability, lawful operation and ability to honor depositors' claims and which would not have been possible had defendants not assisted in the continued operation of the BCCI and/or association-in-fact enterprise or revealed the true state of affairs about BCCI's finances, operations or conduct of its business. BCCI depositors lost access to all of their deposits and lost access to a significant amount of those deposits forever when U.S. regulators determined that BCCI was operating illegally in this country by participating in RICO predicate acts, such the illegal activities set forth above, and persuaded banking regulators in the United Kingdom, Luxembourg and other locations to cooperate with U.S. regulators in seizing BCCI, taking control of its operations and freezing its depositors' funds. Because BCCI had been operating as a "Ponzi scheme" with grossly overstated assets, it did not have the monies required to cover depositors' claims, thus the BCCI depositors have lost approximately

70%-90% of the face amount of their deposits, plus interest accrued thereon subsequent to the date of seizure, and each has suffered injury in his, her, or its business or property. By participating in the predicate acts specified herein, the defendants helped the BCCI criminal enterprise to continue to operate and aided and abetted or conspired with the BCCI enterprise. BCCI would not have been able to continue its illegal operations and, thus, would not have been able to obtain plaintiffs' deposits when it did and plaintiffs' deposits would not have been lost by reason of the subsequent seizure of BCCI by United States and other regulators, had these and other predicate acts not occurred. Each plaintiff was thus defrauded into placing his, her, or its money into a criminal enterprise instead of into a legitimate bank. Their deposits were thus placed into an ongoing "Ponzi scheme" and they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were they misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein.

(k) Laundering the proceeds of illegal narcotics activities through its Miami, Florida, offices. Several BCCI operatives were convicted of these charges in United States District Court and BCCI pleaded guilty, paid a $15 million fine and was placed on probation for five years for violations of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), 18 U.S.C. § 1956 (Laundering of Monetary Instruments), 18 U.S.C. § 1957 (Engaging in

Monetary Transactions in Property Derived from Specified Unlawful Activity), 18 U.S.C. § 1961(1)(A) (Dealing in Narcotic or Other Dangerous Drugs Punishable Under Laws of U.S.) and 18 U.S.C. § 1961(1)(E) (Acts Indictable Under Currency and Foreign Transactions Reporting Act). These predicate acts occurred during 1984-1988. Along with BCCI, the defendants who directly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Noriega, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann and Shafi. These predicate acts caused plaintiffs' injury in the following manner: Each plaintiff and each member of the class was injured when the BCCI criminal enterprise and/or the association-in-fact enterprise obtained their money deposited in BCCI, which was made possible only by BCCI's false representations of its substantial assets, profitability, lawful operation and ability to honor depositors' claims and which would not have been possible had defendants not assisted in the continued operation of the BCCI and/or association-in-fact enterprise or revealed the true state of affairs about BCCI's finances, operation, or conduct of its business. BCCI depositors lost access to all of their deposits and lost access to a significant amount of those deposits forever when U.S. regulators determined that BCCI was operating illegally in this country by participating in RICO predicate acts, such the illegal activities set forth above, and persuaded banking regulators in the United Kingdom, Luxembourg and other locations to cooperate with U.S. regulators in seizing BCCI, taking control of its operations and freezing its depositors' funds. Because BCCI had been operating as a

"Ponzi scheme" with grossly overstated assets, it did not have the monies required to cover depositors' claims, thus the BCCI depositors have lost approximately 70%-90% of the face amount of their deposits, plus interest accrued thereon subsequent to the date of seizure, and each has suffered injury in his, her, or its business or property. By participating in the predicate acts specified herein, the defendants helped the BCCI criminal enterprise to continue to operate and aided and abetted or conspired with the BCCI enterprise. BCCI would not have been able to continue its illegal operations and, thus, would not have been able to obtain plaintiffs' deposits when it did and plaintiffs' deposits would not have been lost by reason of the subsequent seizure of BCCI by United States and other regulators, had these and other predicate acts not occurred. Each plaintiff was thus defrauded into placing his, her, or its money into a criminal enterprise instead of into a legitimate bank. Their deposits were thus placed into an ongoing "Ponzi scheme" and they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were they misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein.

(l) Making illegal political contributions in the United States, in substantial part through CenTrust's PAC, its officers, top customers and certain of their associates, as well as Goland and Viking Savings, in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud) and 18 U.S.C. § 1344 (Bank Fraud). These predicate acts occurred during 1985-1989. Along with BCCI, the defendants who directly or indirectly participated in

these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Paul and Goland. These predicate acts caused plaintiffs' injury in the following manner: Each plaintiff and each member of the class was injured when the BCCI criminal enterprise and/or the association-in-fact enterprise obtained their money deposited in BCCI, which was made possible only by BCCI's false representations of its substantial assets, profitability, lawful operation and ability to honor depositors' claims and which would not have been possible had defendants not assisted in the continued operation of the BCCI and/or association-in-fact enterprise or revealed the true state of affairs about BCCI's finances, operations or conduct of its business. BCCI depositors lost access to all of their deposits and lost access to a significant amount of those deposits forever when U.S. regulators determined that BCCI was operating illegally in this country by participating in RICO predicate acts, such the illegal activities set forth above, and persuaded banking regulators in the United Kingdom, Luxembourg and other locations to cooperate with U.S. regulators in seizing BCCI, taking control of its operations and freezing its depositors' funds. Because BCCI had been operating as a "Ponzi scheme" with grossly overstated assets, it did not have the monies required to cover depositors' claims, thus the BCCI depositors have lost approximately 70%-90% of the face amount of their deposits, plus interest accrued thereon subsequent to the date of seizure, and each has suffered

injury in his, her, or its business or property. By participating in the predicate acts specified herein, the defendants helped the BCCI criminal enterprise to continue to operate and aided and abetted or conspired with the BCCI enterprise. BCCI would not have been able to continue its illegal operations and, thus, would not have been able to obtain plaintiffs' deposits when it did and plaintiffs' deposits would not have been lost by reason of the subsequent seizure of BCCI by United States and other regulators, had these and other predicate acts not occurred. Each plaintiff was thus defrauded into placing his, her, or its money into a criminal enterprise instead of into a legitimate bank. Their deposits were thus placed into an ongoing "Ponzi scheme" and they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were they misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein.

(m) Assisting Arif Durrani, a Pakistani weapons dealer, to illegally sell and ship (*i.e.*, smuggle) arms to Iran, for which Durrani has been convicted in United States District Court and sentenced to 10 years imprisonment, via letters of credit and monetary transfers from BCCI's Los Angeles, California, office in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises) and 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity). These predicate acts occurred during 1986. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts along with BCCI were Abu Dhabi, Abu Dhabi

Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Lamarche, al-Mazrui, Hartmann, van Oenen, Twitchin and Shafi. These predicate acts caused plaintiffs' injury in the following manner: Each plaintiff and each member of the class was injured when the BCCI criminal enterprise and/or the association-in-fact enterprise obtained their money deposited in BCCI, which was made possible only by BCCI's false representations of its substantial assets, profitability, lawful operation and ability to honor depositors' claims and which would not have been possible had defendants not assisted in the continued operation of the BCCI and/or association-in-fact enterprise or revealed the true state of affairs about BCCI's finances, operations or conduct of its business. BCCI depositors lost access to all of their deposits and lost access to a significant amount of those deposits forever when U.S. regulators determined that BCCI was operating illegally in this country by participating in RICO predicate acts, such the illegal activities set forth above, and persuaded banking regulators in the United Kingdom, Luxembourg and other locations to cooperate with U.S. regulators in seizing BCCI, taking control of its operations and freezing its depositors' funds. Because BCCI had been operating as a "Ponzi scheme" with grossly overstated assets, it did not have the monies required to cover depositors' claims, thus the BCCI depositors have lost approximately 70%-90% of the face amount of their deposits, plus interest accrued thereon subsequent to the date of seizure, and each has suffered injury in his, her, or its business or property. By participating in the predicate acts specified herein, the

defendants helped the BCCI criminal enterprise to continue to operate and aided and abetted or conspired with the BCCI enterprise. BCCI would not have been able to continue its illegal operations and, thus, would not have been able to obtain plaintiffs' deposits when it did and plaintiffs' deposits would not have been lost by reason of the subsequent seizure of BCCI by United States and other regulators, had these and other predicate acts not occurred. Each plaintiff was thus defrauded into placing his, her, or its money into a criminal enterprise instead of into a legitimate bank. Their deposits were thus placed into an ongoing "Ponzi scheme" and they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were they misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein.

(n) Undertaking to obtain and exercise political influence to hinder, halt, deflect or delay any investigation into their conduct in the United States or by U.S. law enforcement authorities and to prolong their conspiracy by hiring a phalanx of United States lobbyists and often paying them excessive fees, making huge and often illegal political contributions in the United States through, *inter alia*, CenTrust (as described above), Clifford and Altman, and having First American make large loans on generous terms to U.S. political figures through First American in violation of 18 U.S.C. § 201 (Bribery of Public Officials and Witnesses), 18 U.S.C. § 1341 (Mail Fraud) and 18 U.S.C. § 1343 (Wire Fraud). These predicate acts occurred during 1985-1990. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts along with BCCI were Abu Dhabi, Abu

Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Hill & Knowlton, Paul, Independence Bank, Dobrich, Shoaib, Goland and Bank of America. These predicate acts caused plaintiffs' injury in the following manner: Each plaintiff and each member of the class was injured when the BCCI criminal enterprise and/or the association-in-fact enterprise obtained their money deposited in BCCI, which was made possible only by BCCI's false representations of its substantial assets, profitability, lawful operation and ability to honor depositors' claims and which would not have been possible had defendants not assisted in the continued operation of the BCCI and/or association-in-fact enterprise or revealed the true state of affairs about BCCI's finances, operations or conduct of its business. BCCI depositors lost access to all of their deposits and lost access to a significant amount of those deposits forever when U.S. regulators determined that BCCI was operating illegally in this country by participating in RICO predicate acts, such the illegal activities set forth above, and persuaded banking regulators in the United Kingdom, Luxembourg and other locations to cooperate with U.S. regulators in seizing BCCI, taking control of its operations and freezing its depositors' funds. Because BCCI had been operating as a "Ponzi scheme" with grossly overstated assets, it did not have the monies required to cover depositors' claims, thus the BCCI depositors have lost approximately 70%-90% of the face amount of their deposits, plus interest accrued thereon subsequent to the date of seizure, and

each has suffered injury in his, her, or its business or property. By participating in the predicate acts specified herein, the defendants helped the BCCI criminal enterprise to continue to operate and aided and abetted or conspired with the BCCI enterprise. BCCI would not have been able to continue its illegal operations and, thus, would not have been able to obtain plaintiffs' deposits when it did and plaintiffs' deposits would not have been lost by reason of the subsequent seizure of BCCI by United States and other regulators, had these and other predicate acts not occurred. Each plaintiff was thus defrauded into placing his, her, or its money into a criminal enterprise instead of into a legitimate bank. Their deposits were thus placed into an ongoing "Ponzi scheme" and they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were they misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein.

(o) Circulating by mail and wire within and into the United States BCCI's false and misleading financial statements, as well as other false statements made by BCCI and its co-conspirators, to the effect that BCCI was not operating illegally in the United States, was well capitalized, had sufficient liquidity, was well-managed and was working closely and cooperating with regulators, all in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud) and 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises). These predicate acts occurred during 1985-1991. Along with

BCCI, the defendants who directly or indirectly participated in these predicate acts were Price Waterhouse, Price Waterhouse/US, Price Waterhouse/UK, Price Waterhouse/Luxembourg, Ernst & Young, Ernst & Young/US, Ernst & Young/UK, Ernst & Young/Luxembourg, Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Independence Bank, Dobrich, Shoaib, Bank of America and Hill & Knowlton. These predicate acts caused plaintiffs' injury in the following manner: Each plaintiff and each member of the class was injured when the BCCI criminal enterprise and/or the association-in-fact enterprise obtained their money deposited in BCCI, which was made possible only by BCCI's false representations of its substantial assets, profitability, lawful operation and ability to honor depositors' claims and which would not have been possible had defendants not assisted in the continued operation of the BCCI and/or association-in-fact enterprise or revealed the true state of affairs about BCCI's finances, operations or conduct of its business. BCCI depositors lost access to all of their deposits and lost access to a significant amount of those deposits forever when U.S. regulators determined that BCCI was operating illegally in this country by participating in RICO predicate acts, such the illegal activities set forth above, and persuaded banking regulators in the United Kingdom, Luxembourg and other locations to cooperate with U.S. regulators in seizing BCCI, taking control of its operations and freezing its depositors'

funds. Because BCCI had been operating as a "Ponzi scheme" with grossly overstated assets, it did not have the monies required to cover depositors' claims, thus the BCCI depositors have lost approximately 70%-90% of the face amount of their deposits, plus interest accrued thereon subsequent to the date of seizure, and each has suffered injury in his, her, or its business or property. By participating in the predicate acts specified herein, the defendants helped the BCCI criminal enterprise to continue to operate and aided and abetted or conspired with the BCCI enterprise. BCCI would not have been able to continue its illegal operations and, thus, would not have been able to obtain plaintiffs' deposits when it did and plaintiffs' deposits would not have been lost by reason of the subsequent seizure of BCCI by United States and other regulators, had these and other predicate acts not occurred. Each plaintiff was thus defrauded into placing his, her, or its money into a criminal enterprise instead of into a legitimate bank. Their deposits were thus placed into an ongoing "Ponzi scheme" and they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were they misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein.

(p) By engaging in fraudulent sales of securities in the United States and deceptive and dishonest acts in connection with CenTrust's "selling" $150 million in subordinated debentures in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud) and 18 U.S.C. § 1961(1)(D) (Fraud in Sale of Securities). These predicate acts occurred during 1988. Along with BCCI, the defendants who directly or

indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Paul and Bank of America. These predicate acts caused plaintiffs' injury in the following manner: Each plaintiff and each member of the class was injured when the BCCI criminal enterprise and/or the association-in-fact enterprise obtained their money deposited in BCCI, which was made possible only by BCCI's false representations of its substantial assets, profitability, lawful operation and ability to honor depositors' claims and which would not have been possible had defendants not assisted in the continued operation of the BCCI and/or association-in-fact enterprise or revealed the true state of affairs about BCCI's finances, operations or conduct of its business. BCCI depositors lost access to all of their deposits and lost access to a significant amount of those deposits forever when U.S. regulators determined that BCCI was operating illegally in this country by participating in RICO predicate acts, such the illegal activities set forth above, and persuaded banking regulators in the United Kingdom, Luxembourg and other locations to cooperate with U.S. regulators in seizing BCCI, taking control of its operations and freezing its depositors' funds. Because BCCI had been operating as a "Ponzi scheme" with grossly overstated assets, it did not have the monies required to cover depositors' claims, thus the BCCI depositors have lost approximately 70%-90% of the face amount of their deposits, plus interest accrued thereon subsequent to the date of seizure, and each has suffered

injury in his, her, or its business or property. By participating in the predicate acts specified herein, the defendants helped the BCCI criminal enterprise to continue to operate and aided and abetted or conspired with the BCCI enterprise. BCCI would not have been able to continue its illegal operations and, thus, would not have been able to obtain plaintiffs' deposits when it did and plaintiffs' deposits would not have been lost by reason of the subsequent seizure of BCCI by United States and other regulators, had these and other predicate acts not occurred. Each plaintiff was thus defrauded into placing his, her, or its money into a criminal enterprise instead of into a legitimate bank. Their deposits were thus placed into an ongoing "Ponzi scheme" and they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were they misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein.

(q) By engaging in financial institution, bank, mail and wire fraud in the United States in helping to falsify CenTrust's apparent financial condition to avoid its regulatory seizure, keeping that bank operating for one or two more years and causing the United States government to spend hundreds of millions of dollars more to "bail out" that bank when it was finally seized, all in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud) and 18 U.S.C. § 1344 (Bank Fraud). These predicate acts occurred during 1986-1988. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Lamarche, van Oenen,

Twitchin, al-Mazrui, Hartmann and Paul. These predicate acts caused plaintiffs' injury in the following manner: Each plaintiff and each member of the class was injured when the BCCI criminal enterprise and/or the association-in-fact enterprise obtained their money deposited in BCCI, which was made possible only by BCCI's false representations of its substantial assets, profitability, lawful operation and ability to honor depositors' claims and which would not have been possible had defendants not assisted in the continued operation of the BCCI and/or association-in-fact enterprise or revealed the true state of affairs about BCCI's finances, operations or conduct of its business. BCCI depositors lost access to all of their deposits and lost access to a significant amount of those deposits forever when U.S. regulators determined that BCCI was operating illegally in this country by participating in RICO predicate acts, such the illegal activities set forth above, and persuaded banking regulators in the United Kingdom, Luxembourg and other locations to cooperate with U.S. regulators in seizing BCCI, taking control of its operations and freezing its depositors' funds. Because BCCI had been operating as a "Ponzi scheme" with grossly overstated assets, it did not have the monies required to cover depositors' claims, thus the BCCI depositors have lost approximately 70%-90% of the face amount of their deposits, plus interest accrued thereon subsequent to the date of seizure, and each has suffered injury in his, her, or its business or property. By participating in the predicate acts specified herein, the defendants helped the BCCI criminal enterprise to continue to operate and aided and abetted or conspired with the BCCI enterprise. BCCI would not have been able to

continue its illegal operations and, thus, would not have been able to obtain plaintiffs' deposits when it did and plaintiffs' deposits would not have been lost by reason of the subsequent seizure of BCCI by United States and other regulators, had these and other predicate acts not occurred. Each plaintiff was thus defrauded into placing his, her, or its money into a criminal enterprise instead of into a legitimate bank. Their deposits were thus placed into an ongoing "Ponzi scheme" and they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were they misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein.

(r) Covering up its illegal activities in the United States by making repeated false statements denying BCCI's actual control of First American, CenTrust, NBG and Independence Bank, by arranging for a plea bargain in connection with a money-laundering plea in federal district court in Florida that could bar any further criminal prosecution of BCCI by federal authorities, and by lying to federal investigators and grand juries, paying off employees not to "blow the whistle" and advising one or more witnesses (*i.e.*, Amjad Awan) to leave this country to avoid giving testimony to federal law enforcement or investigating agencies in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 1503, *et seq.* (Obstruction of Justice), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), 18 U.S.C. § 201 (Bribery of Public Officials and Witnesses), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These

predicate acts occurred during 1975-1991. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Sheikh Adham, Khalil, Jawhary, al-Fulaij, Abedi, Naqvi, Iqbal, Awan, al-Mazrui, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Paul, Independence Bank, Dobrich, Shoaib, Goland, Bank of America and Hill & Knowlton. These predicate acts caused plaintiffs' injury in the following manner: Each plaintiff and each member of the class was injured when the BCCI criminal enterprise and/or the association-in-fact enterprise obtained their money deposited in BCCI, which was made possible only by BCCI's false representations of its substantial assets, profitability, lawful operation and ability to honor depositors' claims and which would not have been possible had defendants not assisted in the continued operation of the BCCI and/or association-in-fact enterprise or revealed the true state of affairs about BCCI's finances, operations or conduct of its business. BCCI depositors lost access to all of their deposits and lost access to a significant amount of those deposits forever when U.S. regulators determined that BCCI was operating illegally in this country by participating in RICO predicate acts, such the illegal activities set forth above, and persuaded banking regulators in the United Kingdom, Luxembourg and other locations to cooperate with U.S. regulators in seizing BCCI, taking control of its operations and freezing its depositors' funds. Because BCCI had been operating as a "Ponzi scheme" with grossly overstated assets, it

did not have the monies required to cover depositors' claims, thus the BCCI depositors have lost approximately 70%-90% of the face amount of their deposits, plus interest accrued thereon subsequent to the date of seizure, and each has suffered injury in his, her, or its business or property. By participating in the predicate acts specified herein, the defendants helped the BCCI criminal enterprise to continue to operate and aided and abetted or conspired with the BCCI enterprise. BCCI would not have been able to continue its illegal operations and, thus, would not have been able to obtain plaintiffs' deposits when it did and plaintiffs' deposits would not have been lost by reason of the subsequent seizure of BCCI by United States and other regulators, had these and other predicate acts not occurred. Each plaintiff was thus defrauded into placing his, her, or its money into a criminal enterprise instead of into a legitimate bank. Their deposits were thus placed into an ongoing "Ponzi scheme" and they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were they misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein.

(s) By helping its Los Angeles agency to funnel at least $3 million in illegal proceeds from an Orange County, California, telemarketing scheme out of the United States in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen

Monies). These predicate acts occurred during 1985. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Pharaon, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann and Shafi. These predicate acts caused plaintiffs' injury in the following manner: Each plaintiff and each member of the class was injured when the BCCI criminal enterprise and/or the association-in-fact enterprise obtained their money deposited in BCCI, which was made possible only by BCCI's false representations of its substantial assets, profitability, lawful operation and ability to honor depositors' claims and which would not have been possible had defendants not assisted in the continued operation of the BCCI and/or association-in-fact enterprise or revealed the true state of affairs about BCCI's finances, operations or conduct of its business. BCCI depositors lost access to all of their deposits and lost access to a significant amount of those deposits forever when U.S. regulators determined that BCCI was operating illegally in this country by participating in RICO predicate acts, such the illegal activities set forth above, and persuaded banking regulators in the United Kingdom, Luxembourg and other locations to cooperate with U.S. regulators in seizing BCCI, taking control of its operations and freezing its depositors' funds. Because BCCI had been operating as a "Ponzi scheme" with grossly overstated assets, it did not have the monies required to cover depositors' claims, thus the BCCI depositors have lost approximately 70%-90% of the face amount of their deposits, plus interest accrued thereon

subsequent to the date of seizure, and each has suffered injury in his, her, or its business or property. By participating in the predicate acts specified herein, the defendants helped the BCCI criminal enterprise to continue to operate and aided and abetted or conspired with the BCCI enterprise. BCCI would not have been able to continue its illegal operations and, thus, would not have been able to obtain plaintiffs' deposits when it did and plaintiffs' deposits would not have been lost by reason of the subsequent seizure of BCCI by United States and other regulators, had these and other predicate acts not occurred. Each plaintiff was thus defrauded into placing his, her, or its money into a criminal enterprise instead of into a legitimate bank. Their deposits were thus placed into an ongoing "Ponzi scheme" and they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were they misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein.

(t) By illegally financing or attempting to finance the sale of French-manufactured military fighter aircraft owned by Argentina to third world countries, including Saddam Hussein's Iraq, from its Miami, Florida, office, in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises) and 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity). These predicate acts occurred during 1989. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed,

Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann and Shafi. These predicate acts caused plaintiffs' injury in the following manner: Each plaintiff and each member of the class was injured when the BCCI criminal enterprise and/or the association-in-fact enterprise obtained their money deposited in BCCI, which was made possible only by BCCI's false representations of its substantial assets, profitability, lawful operation and ability to honor depositors' claims and which would not have been possible had defendants not assisted in the continued operation of the BCCI and/or association-in-fact enterprise or revealed the true state of affairs about BCCI's finances, operations or conduct of its business. BCCI depositors lost access to all of their deposits and lost access to a significant amount of those deposits forever when U.S. regulators determined that BCCI was operating illegally in this country by participating in RICO predicate acts, such the illegal activities set forth above, and persuaded banking regulators in the United Kingdom, Luxembourg and other locations to cooperate with U.S. regulators in seizing BCCI, taking control of its operations and freezing its depositors' funds. Because BCCI had been operating as a "Ponzi scheme" with grossly overstated assets, it did not have the monies required to cover depositors' claims, thus the BCCI depositors have lost approximately 70%-90% of the face amount of their deposits, plus interest accrued thereon subsequent to the date of seizure, and each has suffered injury in his, her, or its business or property. By participating in the predicate acts specified herein, the defendants helped the BCCI criminal enterprise to continue to operate and aided and abetted or

conspired with the BCCI enterprise. BCCI would not have been able to continue its illegal operations and, thus, would not have been able to obtain plaintiffs' deposits when it did and plaintiffs' deposits would not have been lost by reason of the subsequent seizure of BCCI by United States and other regulators, had these and other predicate acts not occurred. Each plaintiff was thus defrauded into placing his, her, or its money into a criminal enterprise instead of into a legitimate bank. Their deposits were thus placed into an ongoing "Ponzi scheme" and they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were they misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein.

(u) By financing international terrorism, including financing and assisting the notorious ANO organization, financing the purchase, sale and delivery of illegal arms (including arms shipped to Saddam Hussein's Iraq) by Abu Nidal and some 10 others, including Samir Najmeddin, through some 42 accounts involving $50 million in BCCI's London Bank, all in violation of 18 U.S.C. § 1344 (Bank Fraud) and 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises). These predicate acts occurred during 1987. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts along with BCCI were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Lamarche, van Oenen, Twitchin and Shafi. These predicate acts caused plaintiffs' injury in the following manner: Each plaintiff and each member of the class was injured when the BCCI

criminal enterprise and/or the association-in-fact enterprise obtained their money deposited in BCCI, which was made possible only by BCCI's false representations of its substantial assets, profitability, lawful operation and ability to honor depositors' claims and which would not have been possible had defendants not assisted in the continued operation of the BCCI and/or association-in-fact enterprise or revealed the true state of affairs about BCCI's finances, operations or conduct of its business. BCCI depositors lost access to all of their deposits and lost access to a significant amount of those deposits forever when U.S. regulators determined that BCCI was operating illegally in this country by participating in RICO predicate acts, such the illegal activities set forth above, and persuaded banking regulators in the United Kingdom, Luxembourg and other locations to cooperate with U.S. regulators in seizing BCCI, taking control of its operations and freezing its depositors' funds. Because BCCI had been operating as a "Ponzi scheme" with grossly overstated assets, it did not have the monies required to cover depositors' claims, thus the BCCI depositors have lost approximately 70%-90% of the face amount of their deposits, plus interest accrued thereon subsequent to the date of seizure, and each has suffered injury in his, her, or its business or property. By participating in the predicate acts specified herein, the defendants helped the BCCI criminal enterprise to continue to operate and aided and abetted or conspired with the BCCI enterprise. BCCI would not have been able to continue its illegal operations and, thus, would not have been able to obtain plaintiffs' deposits when it did and plaintiffs' deposits would not have been lost by reason of

the subsequent seizure of BCCI by United States and other regulators, had these and other predicate acts not occurred. Each plaintiff was thus defrauded into placing his, her, or its money into a criminal enterprise instead of into a legitimate bank. Their deposits were thus placed into an ongoing "Ponzi scheme" and they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were they misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein.

(v) By assisting the former President of Peru, Alan Garcia, to steal millions from his nation's treasury and funneling the money to secret accounts via the BCCI Bank systems in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1987. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann and Shafi. These predicate acts caused plaintiffs' injury in the following manner: Each plaintiff and each member of the class was injured when the BCCI criminal enterprise and/or the association-in-fact enterprise obtained their money deposited in BCCI, which was made possible only by BCCI's false representations of its substantial assets, profitability, lawful operation and ability to honor depositors' claims and which would not have been possible had

defendants not assisted in the continued operation of the BCCI and/or association-in-fact enterprise or revealed the true state of affairs about BCCI's finances, operations or conduct of its business. BCCI depositors lost access to all of their deposits and lost access to a significant amount of those deposits forever when U.S. regulators determined that BCCI was operating illegally in this country by participating in RICO predicate acts, such the illegal activities set forth above, and persuaded banking regulators in the United Kingdom, Luxembourg and other locations to cooperate with U.S. regulators in seizing BCCI, taking control of its operations and freezing its depositors' funds. Because BCCI had been operating as a "Ponzi scheme" with grossly overstated assets, it did not have the monies required to cover depositors' claims, thus the BCCI depositors have lost approximately 70%-90% of the face amount of their deposits, plus interest accrued thereon subsequent to the date of seizure, and each has suffered injury in his, her, or its business or property. By participating in the predicate acts specified herein, the defendants helped the BCCI criminal enterprise to continue to operate and aided and abetted or conspired with the BCCI enterprise. BCCI would not have been able to continue its illegal operations and, thus, would not have been able to obtain plaintiffs' deposits when it did and plaintiffs' deposits would not have been lost by reason of the subsequent seizure of BCCI by United States and other regulators, had these and other predicate acts not occurred. Each plaintiff was thus defrauded into placing his, her, or its money into a criminal enterprise instead of into a legitimate bank. Their deposits were thus placed into an ongoing "Ponzi

scheme" and they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were they misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein.

(w) By paying some $3 million in bribes to Peruvian bankers to obtain deposits from Peru's Central Bank in violation of 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1986-1987. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann and Shafi. These predicate acts caused plaintiffs' injury in the following manner: Each plaintiff and each member of the class was injured when the BCCI criminal enterprise and/or the association-in-fact enterprise obtained their money deposited in BCCI, which was made possible only by BCCI's false representations of its substantial assets, profitability, lawful operation and ability to honor depositors' claims and which would not have been possible had defendants not assisted in the continued operation of the BCCI and/or association-in-fact enterprise or revealed the true state of affairs about BCCI's finances, operations or conduct of its business. BCCI depositors lost access to all of their deposits and lost access to a significant amount of those deposits forever when U.S. regulators determined that BCCI was

operating illegally in this country by participating in RICO predicate acts, such the illegal activities set forth above, and persuaded banking regulators in the United Kingdom, Luxembourg and other locations to cooperate with U.S. regulators in seizing BCCI, taking control of its operations and freezing its depositors' funds. Because BCCI had been operating as a "Ponzi scheme" with grossly overstated assets, it did not have the monies required to cover depositors' claims, thus the BCCI depositors have lost approximately 70%-90% of the face amount of their deposits, plus interest accrued thereon subsequent to the date of seizure, and each has suffered injury in his, her, or its business or property. By participating in the predicate acts specified herein, the defendants helped the BCCI criminal enterprise to continue to operate and aided and abetted or conspired with the BCCI enterprise. BCCI would not have been able to continue its illegal operations and, thus, would not have been able to obtain plaintiffs' deposits when it did and plaintiffs' deposits would not have been lost by reason of the subsequent seizure of BCCI by United States and other regulators, had these and other predicate acts not occurred. Each plaintiff was thus defrauded into placing his, her, or its money into a criminal enterprise instead of into a legitimate bank. Their deposits were thus placed into an ongoing "Ponzi scheme" and they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were they misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein.

(x) By helping Munther Ismael Bilbeisi illegally sell Jordanian helicopters to Guatemala at inflated prices so

that he could pay kickbacks to relatives of the President of Guatemala and certain high military officials in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1987. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann and Shafi. These predicate acts caused plaintiffs' injury in the following manner: Each plaintiff and each member of the class was injured when the BCCI criminal enterprise and/or the association-in-fact enterprise obtained their money deposited in BCCI, which was made possible only by BCCI's false representations of its substantial assets, profitability, lawful operation and ability to honor depositors' claims and which would not have been possible had defendants not assisted in the continued operation of the BCCI and/or association-in-fact enterprise or revealed the true state of affairs about BCCI's finances, operations or conduct of its business. BCCI depositors lost access to all of their deposits and lost access to a significant amount of those deposits forever when U.S. regulators determined that BCCI was operating illegally in this country by participating in RICO predicate acts, such the illegal activities set forth above, and persuaded banking regulators in the United Kingdom, Luxembourg and

other locations to cooperate with U.S. regulators in seizing BCCI, taking control of its operations and freezing its depositors' funds. Because BCCI had been operating as a "Ponzi scheme" with grossly overstated assets, it did not have the monies required to cover depositors' claims, thus the BCCI depositors have lost approximately 70%-90% of the face amount of their deposits, plus interest accrued thereon subsequent to the date of seizure, and each has suffered injury in his, her, or its business or property. By participating in the predicate acts specified herein, the defendants helped the BCCI criminal enterprise to continue to operate and aided and abetted or conspired with the BCCI enterprise. BCCI would not have been able to continue its illegal operations and, thus, would not have been able to obtain plaintiffs' deposits when it did and plaintiffs' deposits would not have been lost by reason of the subsequent seizure of BCCI by United States and other regulators, had these and other predicate acts not occurred. Each plaintiff was thus defrauded into placing his, her, or its money into a criminal enterprise instead of into a legitimate bank. Their deposits were thus placed into an ongoing "Ponzi scheme" and they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were they misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein.

(y) Committing bank, financial institution, mail and wire fraud in the United States by illegally obtaining and maintaining control of four American banks, *i.e.*, First American, NBG, CenTrust and Independence Bank, through the use of secretly compensated nominees and

the filing of false statements and reports with the FRB and other regulatory authorities, all in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises) and 18 U.S.C. § 201 (Bribery of Public Officials and Witnesses). These predicate acts occurred during 1975-1991. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Price Waterhouse, Price Waterhouse/US, Ernst & Young, Ernst & Young/US, Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Sheikh Adham, Khalil, Jawhary, al-Fulaij, Abedi, Naqvi, Iqbal, Awan, al-Mazrui, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Lance, Paul, Independence Bank, Dobrich, Shoaib, Goland, Bank of America and Hill & Knowlton. These predicate acts caused plaintiffs' injury in the following manner: Each plaintiff and each member of the class was injured when the BCCI criminal enterprise and/or the association-in-fact enterprise obtained their money deposited in BCCI, which was made possible only by BCCI's false representations of its substantial assets, profitability, lawful operation and ability to honor depositors' claims and which would not have been possible had defendants not assisted in the continued operation of the BCCI and/or association-in-fact enterprise or revealed the true state of affairs about BCCI's finances, operations or conduct of its business. BCCI depositors lost access to all of their deposits and lost access to a significant amount of those deposits forever when U.S.

regulators determined that BCCI was operating illegally in this country by participating in RICO predicate acts, such the illegal activities set forth above, and persuaded banking regulators in the United Kingdom, Luxembourg and other locations to cooperate with U.S. regulators in seizing BCCI, taking control of its operations and freezing its depositors' funds. Because BCCI had been operating as a "Ponzi scheme" with grossly overstated assets, it did not have the monies required to cover depositors' claims, thus the BCCI depositors have lost approximately 70%-90% of the face amount of their deposits, plus interest accrued thereon subsequent to the date of seizure, and each has suffered injury in his, her, or its business or property. By participating in the predicate acts specified herein, the defendants helped the BCCI criminal enterprise to continue to operate and aided and abetted or conspired with the BCCI enterprise. BCCI would not have been able to continue its illegal operations and, thus, would not have been able to obtain plaintiffs' deposits when it did and plaintiffs' deposits would not have been lost by reason of the subsequent seizure of BCCI by United States and other regulators, had these and other predicate acts not occurred. Each plaintiff was thus defrauded into placing his, her, or its money into a criminal enterprise instead of into a legitimate bank. Their deposits were thus placed into an ongoing "Ponzi scheme" and they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were they misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein.

(z) In 1988, purchasing (*i.e.*, "parking") some $35 million in junk bonds issued by CenTrust in the United States in order to artificially prop up its financial condition at a time when regulators were bearing down on it and threatening to close it. Those bonds were repurchased from the BCCI Banks and other straw parties by CenTrust at face value shortly after the regulators' inspection of CenTrust had been concluded. This transaction was undertaken in a deliberate effort to deceive American bank regulators and to help a fraudulently-operated savings and loan to stay open longer, which ultimately inflicted great damage on American taxpayers and constituted, *inter alia*, financial institution fraud, in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud) and 18 U.S.C. § 1961(1)(D) (Fraud in Sale of Securities). These predicate acts occurred during 1988. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann, Shafi, Paul and Bank of America. These predicate acts caused plaintiffs' injury in the following manner: Each plaintiff and each member of the class was injured when the BCCI criminal enterprise and/or the association-in-fact enterprise obtained their money deposited in BCCI, which was made possible only by BCCI's false representations of its substantial assets, profitability, lawful operation and ability to honor depositors' claims and which would not have been possible had defendants not assisted in the continued operation of the BCCI and/or association-in-fact

enterprise or revealed the true state of affairs about BCCI's finances, operations or conduct of its business. BCCI depositors lost access to all of their deposits and lost access to a significant amount of those deposits forever when U.S. regulators determined that BCCI was operating illegally in this country by participating in RICO predicate acts, such the illegal activities set forth above, and persuaded banking regulators in the United Kingdom, Luxembourg and other locations to cooperate with U.S. regulators in seizing BCCI, taking control of its operations and freezing its depositors' funds. Because BCCI had been operating as a "Ponzi scheme" with grossly overstated assets, it did not have the monies required to cover depositors' claims, thus the BCCI depositors have lost approximately 70%-90% of the face amount of their deposits, plus interest accrued thereon subsequent to the date of seizure, and each has suffered injury in his, her, or its business or property. By participating in the predicate acts specified herein, the defendants helped the BCCI criminal enterprise to continue to operate and aided and abetted or conspired with the BCCI enterprise. BCCI would not have been able to continue its illegal operations and, thus, would not have been able to obtain plaintiffs' deposits when it did and plaintiffs' deposits would not have been lost by reason of the subsequent seizure of BCCI by United States and other regulators, had these and other predicate acts not occurred. Each plaintiff was thus defrauded into placing his, her, or its money into a criminal enterprise instead of into a legitimate bank. Their deposits were thus placed into an ongoing "Ponzi scheme" and they were used to

finance the ongoing operation of the BCCI criminal enterprise and/or were they misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein.

(aa) Causing First American to purchase Pharaon's interest in NBG (which was actually BCCI's interest) in 1985 at a grossly inflated and unfair price, thus funneling at least $220 million to the BCCI Banks, which monies were utilized by it to help cover up and perpetuate its ongoing fraud, all in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1987. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Lance and Bank of America. These predicate acts caused plaintiffs' injury in the following manner: Each plaintiff and each member of the class was injured when the BCCI criminal enterprise and/or the association-in-fact enterprise obtained their money deposited in BCCI, which was made possible only by BCCI's false representations of its substantial assets, profitability, lawful operation and ability to honor depositors' claims and which would not have been possible had defendants not assisted in the continued operation of the BCCI and/or association-in-fact enterprise or revealed

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misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein.

(ab) Paying bribes to top officials of the Peruvian Central Bank in order to induce them to cause the Government of Peru to place funds in the BCCI Banks and paying a $32 million bribe to the former manager of its investment activities in London in order to prevent him from exposing the ongoing fraud and criminal conduct ongoing at the BCCI Banks to a United States Senate Subcommittee, which payment was known to and approved by BCCI's then-auditors, Ernst & Young and/or Ernst & Young/UK, in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), 18 U.S.C. § 201 (Bribery of Public Officials and Witnesses), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1986-1987. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Ernst & Young, Ernst & Young/UK Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Capcom, Magnes, Romrell, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann and Shafi. These predicate acts caused plaintiffs' injury in the following manner: Each plaintiff and each member of the class was injured when the BCCI criminal enterprise and/or the association-in-fact enterprise obtained their money deposited in BCCI, which was made possible only by BCCI's false representations of its substantial assets,

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(ac) Permitting the BCCI Banks' branches in Florida to engage in financing illegal narcotics transactions and to engage in money laundering transactions on behalf of drug dealers and then, when that activity was discovered by law enforcement officials, using its political influence to obstruct justice and obtain an improper plea bargain agreement which permitted it to pay a paltry $15 million fine, while securing an agreement from federal law enforcement officials which was grossly overbroad because it purported to commit the United States not ever to charge the BCCI Banks or their affiliates "with committing any other federal criminal offenses under investigation or known to the government at the time of the execution of this agreement or relating in any manner to the charges disposed of by the agreement," all in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), 18 U.S.C. § 1956 (Laundering of Monetary Instruments), 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity), 18 U.S.C. § 201 (Bribery of Public Officials and Witnesses), 18 U.S.C. § 2314 (Transportation of Stolen Monies), 18 U.S.C. § 2315 (Sale

or Receipt of Stolen Monies), 18 U.S.C. § 1961(1)(A) (Dealing in Narcotic or Other Dangerous Drugs Punishable Under Laws of U.S.) and 18 U.S.C. § 1961(1)(E) (Acts Indictable Under Currency and Foreign Transactions Reporting Act). These predicate acts occurred in 1984-1989. The defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Noriega, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann, Shafi, First American, Clifford & Warnke, Clifford, Altman, Bank of America and Hill & Knowlton. These predicate acts caused plaintiffs' injury in the following manner: Each plaintiff and each member of the class was injured when the BCCI criminal enterprise and/or the association-in-fact enterprise obtained their money deposited in BCCI, which was made possible only by BCCI's false representations of its substantial assets, profitability, lawful operation and ability to honor depositors' claims and which would not have been possible had defendants not assisted in the continued operation of the BCCI and/or association-in-fact enterprise or revealed the true state of affairs about BCCI's finances, operations or conduct of its business. BCCI depositors lost access to all of their deposits and lost access to a significant amount of those deposits forever when U.S. regulators determined that BCCI was operating illegally in this country by participating in RICO predicate acts, such the illegal activities set forth above, and persuaded banking regulators in the United Kingdom, Luxembourg and other locations to cooperate with U.S. regulators in seizing BCCI, taking control of its operations and freezing its depositors'

funds. Because BCCI had been operating as a "Ponzi scheme" with grossly overstated assets, it did not have the monies required to cover depositors' claims, thus the BCCI depositors have lost approximately 70%-90% of the face amount of their deposits, plus interest accrued thereon subsequent to the date of seizure, and each has suffered injury in his, her, or its business or property. By participating in the predicate acts specified herein, the defendants helped the BCCI criminal enterprise to continue to operate and aided and abetted or conspired with the BCCI enterprise. BCCI would not have been able to continue its illegal operations and, thus, would not have been able to obtain plaintiffs' deposits when it did and plaintiffs' deposits would not have been lost by reason of the subsequent seizure of BCCI by United States and other regulators, had these and other predicate acts not occurred. Each plaintiff was thus defrauded into placing his, her, or its money into a criminal enterprise instead of into a legitimate bank. Their deposits were thus placed into an ongoing "Ponzi scheme" and they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were they misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein.

(ad) Manufacturing false documentation to facilitate inflation of account turnover and concealment of outflows of funds involving over 6,500 accounts during a 15-year period, including activities to hide over $600 million in deposits by treating them as unrecorded deposits, thus grossly distorting the Banks' financial statements and making hundreds of millions of dollars of fictitious loans, which were nothing more than transfers

of money to BCCI insiders and those with whom those insiders had incestuous business and other relationships, all in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1976-1991. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Price Waterhouse, Price Waterhouse/US, Price Waterhouse/UK, Price Waterhouse/Luxembourg, Ernst & Young, Ernst & Young/US, Ernst & Young/UK, Ernst & Young/Luxembourg, Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Sheikh Adham, Khalil, Jawhary, al-Fulaij, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Lamarche, al-Mazrui, Hartmann, van Oenen, Twitchin and Shafi. These predicate acts caused plaintiffs' injury in the following manner: Each plaintiff and each member of the class was injured when the BCCI criminal enterprise and/or the association-in-fact enterprise obtained their money deposited in BCCI, which was made possible only by BCCI's false representations of its substantial assets, profitability, lawful operation and ability to honor depositors' claims and which would not have been possible had defendants not assisted in the continued operation of the BCCI and/or association-in-fact enterprise or revealed the true state of affairs about BCCI's finances, operations or conduct of its business. BCCI depositors lost access to all of their deposits and lost access to a significant amount of those deposits forever when U.S. regulators determined that

BCCI was operating illegally in this country by participating in RICO predicate acts, such the illegal activities set forth above, and persuaded banking regulators in the United Kingdom, Luxembourg and other locations to cooperate with U.S. regulators in seizing BCCI, taking control of its operations and freezing its depositors' funds. Because BCCI had been operating as a "Ponzi scheme" with grossly overstated assets, it did not have the monies required to cover depositors' claims, thus the BCCI depositors have lost approximately 70%-90% of the face amount of their deposits, plus interest accrued thereon subsequent to the date of seizure, and each has suffered injury in his, her, or its business or property. By participating in the predicate acts specified herein, the defendants helped the BCCI criminal enterprise to continue to operate and aided and abetted or conspired with the BCCI enterprise. BCCI would not have been able to continue its illegal operations and, thus, would not have been able to obtain plaintiffs' deposits when it did and plaintiffs' deposits would not have been lost by reason of the subsequent seizure of BCCI by United States and other regulators, had these and other predicate acts not occurred. Each plaintiff was thus defrauded into placing his, her, or its money into a criminal enterprise instead of into a legitimate bank. Their deposits were thus placed into an ongoing "Ponzi scheme" and they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were they misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein.

(ae) Acting as personal bankers for and engaging in illegal currency transactions and secret transfers of

monies on behalf of Noriega and helping Noriega to loot Panama's national treasury through a series of transactions by which they permitted and assisted those parties to appropriate government monies for their own personal use, all in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1956 (Laundering of Monetary Instruments), 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity), 18 U.S.C. § 2314 (Transportation of Stolen Monies), 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies) and 18 U.S.C. § 1961(1)(E) (Acts Indictable Under Currency and Foreign Transactions Reporting Act). These predicate acts occurred during 1984-1989. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts along with BCCI were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Abedi, Naqvi, Iqbal, Awan, Rizzi, Akbar, Ahmad, Capcom, Magness, Romrell, Lamarche, van Oenen, Twitchin, al-Mazrui, Hartmann and Shafi. These predicate acts caused plaintiffs' injury in the following manner: Each plaintiff and each member of the class was injured when the BCCI criminal enterprise and/or the association-in-fact enterprise obtained their money deposited in BCCI, which was made possible only by BCCI's false representations of its substantial assets, profitability, lawful operation and ability to honor depositors' claims and which would not have been possible had defendants not assisted in the continued operation of the BCCI and/or association-in-fact enterprise or revealed the true state of affairs about BCCI's finances, operations or conduct of its business. BCCI depositors lost access to all of their deposits and lost access to a significant

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(af) Stealing depositors' monies, including portions of the deposits belonging to U.S. residents and citizens, by permitting BCCI insiders and their friends, relatives and business associates to obtain huge loans that would never be repaid and, in some instances, simply taking the money, all in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1344 (Bank Fraud), 18 U.S.C. § 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1975-1991. Along with BCCI, the defendants who directly and indirectly participated in these predicate acts were Price Waterhouse, Price Waterhouse/US, Price Waterhouse/UK, Price Waterhouse/Luxembourg, Ernst & Young, Ernst & Young/US, Ernst & Young/UK, Ernst & Young/Luxembourg, Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Sheikh Adham, Khalil, Jawhary, al-Fulaij, Abedi, Naqvi, Iqbal, Awan, al-Mazrui, Hartmann, Rizzi, Akbar, Ahmad, Capcom, Magness, Romrell, Lamarche, van Oenen, Twitchin, Shafi, First American, Clifford & Warnke, Clifford, Altman, Scoffone, Beddow, Adams, Lance, Paul, Independence Bank, Dobrich, Shoaib, Goland, Bank of America and Hill & Knowlton. These predicate acts caused plaintiffs' injury in the following manner: Each plaintiff and each member of the class was injured when the BCCI criminal enterprise and/or the association-in-fact enterprise obtained their money deposited in BCCI, which was made possible only

by BCCI's false representations of its substantial assets, profitability, lawful operation and ability to honor depositors' claims and which would not have been possible had defendants not assisted in the continued operation of the BCCI and/or association-in-fact enterprise or revealed the true state of affairs about BCCI's finances, operations or conduct of its business. BCCI depositors lost access to all of their deposits and lost access to a significant amount of those deposits forever when U.S. regulators determined that BCCI was operating illegally in this country by participating in RICO predicate acts, such the illegal activities set forth above, and persuaded banking regulators in the United Kingdom, Luxembourg and other locations to cooperate with U.S. regulators in seizing BCCI, taking control of its operations and freezing its depositors' funds. Because BCCI had been operating as a "Ponzi scheme" with grossly overstated assets, it did not have the monies required to cover depositors' claims, thus the BCCI depositors have lost approximately 70%-90% of the face amount of their deposits, plus interest accrued thereon subsequent to the date of seizure, and each has suffered injury in his, her, or its business or property. By participating in the predicate acts specified herein, the defendants helped the BCCI criminal enterprise to continue to operate and aided and abetted or conspired with the BCCI enterprise. BCCI would not have been able to continue its illegal operations and, thus, would not have been able to obtain plaintiffs' deposits when it did and plaintiffs' deposits would not have been lost by reason of the subsequent seizure of BCCI by United States and other regulators, had these and other predicate acts not occurred. Each plaintiff was

thus defrauded into placing his, her, or its money into a criminal enterprise instead of into a legitimate bank. Their deposits were thus placed into an ongoing "Ponzi scheme" and they were used to finance the ongoing operation of the BCCI criminal enterprise and/or were they misused or diverted for improper and illegal purposes or for the benefit of BCCI insiders and their co-conspirators named as defendants herein.

(ag) Illegally accepting deposits in the United States from U.S. citizens and/or residents, in part with the help of Bank of America and First American, in violation of 18 U.S.C. § 1341 (Mail Fraud), 18 U.S.C. § 1343 (Wire Fraud), 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity), 18 U.S.C. § 2314 (Transportation of Stolen Monies) and 18 U.S.C. § 2315 (Sale or Receipt of Stolen Monies). These predicate acts occurred during 1985-1990. Along with BCCI, the defendants who directly or indirectly participated in these predicate acts were Abu Dhabi, Abu Dhabi Investment/Finance, Sheikh Zayed, Pharaon, InterRedec Cos. (Pharaon entities), Sheikh Adham, Khalil, Jawhary, al-Fulaij, Abedi, Naqvi, Iqbal, al-Mazrui, Hartmann, Lamarche, van Oenen, Twitchin, Shafi, First American, Clifford, Altman, Scoffone, Beddow, Adams and Bank of America. These predicate acts caused plaintiffs' injury in the following manner: Each plaintiff and each member of the class was injured when the BCCI criminal enterprise and/or the association-in-fact enterprise obtained their money deposited in BCCI, which was made possible only by BCCI's false representations of its substantial assets, profitability, lawful operation and ability to honor depositors' claims and which would not have been possible had

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Supreme Court, U.S.
FILED
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No. 95-704

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

AKHTAR HAMID, *et al.*,
Petitioners,

v.

PRICE WATERHOUSE, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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QUESTIONS PRESENTED

1. Whether the decision below properly applied this Court's decision in *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258 (1992), in affirming the dismissal of RICO claims where the pleadings showed that plaintiffs lacked standing because the injury alleged was not proximately caused by the violations claimed.

2. Whether this Court's decision in *National Organization for Women, Inc. v. Scheidler*, —— U.S. ——, 114 S.Ct. 798 (1994), permits a plaintiff to survive a motion to dismiss by pleading a bare legal conclusion where the specific facts pleaded demonstrate that there is no claim for which relief may be granted.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, the following is the identification of the parents and nonwholly owned subsidiaries of the corporate RESPONDENTS joining herein:

1. Respondents Bank of America NT&SA and BankAmerica Corporation:

693327 Ontario Limited
767-231 Holdings, Inc.
824 South Grand Associates
a pea in the pod, Inc.
Acadia Partners, L.P.
ACCEL/Exchange
Advanced Quick Circuits, Inc.
All Post, Inc.
Allied Shade Inc.
American Hardwood Co.
Ametech, Inc.
Anderson Lithograph, Inc.
Applied Medical Resources
Appold Japan Limited
Arr-Maz Management, Inc.
Arrendadora BankAmerica, S.A.
Auto Parts Club, Inc.
BA Futures, S.A.
BA Savings Bank
Bank of America (Asia) Limited
Bank of America Columbia
Bank of America International Limited
Bank of America, S.A.
BankAmerica Representacao e Servicos Limitada
Bankers Insurance Company, Ltd.
BATCO Nominees Limited
Bel Boy Apartments
Bunga Orkid, Ltd.
Cardinal Realty Services
CCFL Subordinated Debt Fund and Company, Limited Partnership

Certrum Properties Corporation
CIC Trading, S.A.
cirrus Technologies, Inc.
CONATEL Compania Nacional de Telefonos
Continental Banco, S.A.
Continental Illinois Servicos Ltda.
Continental Information & Technology Services Co., S.A.
Continental Investment Company, S.A.
Custom Acquisition Corp.
Dartford River Crossing Ltd.
David's Supermarket Inc.
Dynamic Health, Inc.
Elcon Industries, Inc.
Electro-Films
Electronic Broking Services
Electronics Designs
Electronic Payments Exchange, Inc.
Endar Corporation
Fiduciary Services Limited
Film Asset Holding Co.
Future Vision Television, Inc.
Garden Botanika Inc.
Global Map I.L.P. Investment
Golden Gate Participacoes Ltd.
FI Management Inc.
Home Technology Healthcare, Inc.
Hong Kong & Shanghai Insurance Co. Ltd.
Humphreys Inc.
IC Works, Inc.
Immusal, Inc.
Inchroy Credit Corporation Limited
Inversiones Aledo, C.A.
Inversiones Financieras SP Chile S.A.
Inversiones of America Corredores de Bolsa Limitada
InvestAmerica S.A.
IPEF Partners Limited
Italian Private Equity Fund Limited Partnership Italy
Itaparica, S.A. - Emprendimentos Turisticos

ITG Secretaries Limited
Justin, Inc. Chile Ltda.
KorAm Bank
La Jolla Pharmaceutical
Labco I, Inc., Chile Limitada
Laboratorios Chile, S.A.
Latin American Agribusiness Development Corporation S.A.
Les Dolomites Francaise, SARL
LNS Group, Inc.
Mallon Resources Corporation
Marks Brothers Jewelers
Massuh S.A.
MECA Software, L.L.C.
Merrill, Pickard, Anderson & Eyre I
Micro-Source CAD/CAM Inc.
Multi Banco S.A.
Multi-Distribuidora Internacional de Titulos e Valores Ltda.
Multi-Leasing International Arrendamento Mercantil S.A.
Mycenae FSC, Inc.
New Haven Manufacturing Corp.
Novasoft Systems, Inc.
Olefinas Del Zulia, S.A.
Opportunity Capital Partnership II
Pacific Linen, Inc.
Phaestos FSC, Inc.
Phonic Ear Holdings
Plastic Engineered Components, Inc.
Private Export Funding Corp.
Private Investments Syndicate Master-Venture
Quality Tubing, Inc.
Renfrew Services Limited
SABA Medical, Inc.
SABA Medical, L.P.
Savannah Bank of Nigeria
Security Pacific Leasing Canada, Ltd.
Severn River Crossing PLC

Sfuzzi, Inc.
Skye Bridge Limited
Societe Financiere Europeene S.A.
Societe Nouvelle Les Dolomites Francaises
South Coast Metro Center
SP Chile Energia S.A.
SP Inversiones & Servicios S.A.
SRDS, Inc.
Sun Sportswear, Inc.
Supermax Engineering
Sweet Factory, Inc.
System Integrators, Inc.
Tiryns FSC, Inc.
Titulos Rioplatenses S.A.
TransWestern Communications Company, Inc. (aka TCC, Inc.)
Vical Inc.
VTR Tele-Communicaciones S.A.

2. Respondent Hill & Knowlton:

WPP group, plc

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

No. 95-704

AKHTAR HAMID, *et al.*,
Petitioners,

v.

PRICE WATERHOUSE, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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RESPONDENTS' BRIEF IN OPPOSITION

In their Petition for Writ of Certiorari ("Petition"), plaintiffs/petitioners (hereinafter simply "Plaintiffs") seek review of a decision of the United States Court of Appeals for the Ninth Circuit affirming the dismissal of their ambitious attempt to pursue a massive class action asserting claims under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 19 U.S.C. §§ 1961-1968 (1994), purportedly on behalf of all depositors worldwide of the Bank of Credit and Commerce International and its affiliates (collectively, "BCCI").[1] After Plaintiffs had made four attempts at pleading cognizable claims—with the last being their Third Amended Complaint, comprising some 500 pages plus over 2000 pages of exhibits

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[1] Plaintiffs also urged a claim under the Alien Tort Statute, 28 U.S.C. § 1350 (Supp. V 1993), but they have not sought review of the Ninth Circuit's affirmance of the dismissal of this claim.

containing virtually every fact, rumor and speculation then published regarding BCCI—the district court dismissed the action below for lack of subject matter jurisdiction, lack of ripeness, failure to state a claim and lack of standing.[2] The court of appeals affirmed on the last of these grounds.

In their attempt to persuade this Court that the decision below is worthy of review, Plaintiffs have argued in their Petition: (1) that the decision breaks important new ground respecting transnational torts; (2) that it is in conflict with the decisions of other circuits; and (3) that it is inconsistent with this Court's decision in *National Organization for Women, Inc. v. Scheidler*, —— U.S. ——, 114 S. Ct. 798 (1994) ("*NOW*"). None of that is true. The decision below is an unremarkable application of the leading case on RICO standing, *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258 (1992) —a decision that Plaintiffs mention only in a footnote on the twenty-sixth page of their thirty page Petition—and is fully consistent both with the decisions of other circuits and with this Court's decision in *NOW*.

JURISDICTION

As discussed in the decision below (Ptr. App. A-5 to A-7), a serious threshold issue exists as to appellate jurisdiction. Plaintiffs did not file their notice of appeal from the district court judgment of April 30, 1992 until August 19, 1992. This belated notice of appeal would have timely invoked appellate review only if the time for seeking review was extended by reason of the filing of a post-judgment motion pursuant to Federal Rules of Civil Procedure 50(b), 52(b) or 59.[3] Plaintiffs filed a post-

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[2] The district court did not reach other grounds advanced by certain defendants, including the defenses of lack of personal jurisdiction and sovereign immunity. Petitioners' Appendix ("Ptr. App.") A-61.

[3] As the court of appeals notes in its opinion, the amendment to Fed. R. App. P. 4(a)(4) extending the time to appeal pending

judgment motion to set aside the April 30 judgment by reason of the supposed disqualification of the district judge, characterizing that motion as a motion under Rule 52(b). The court of appeals correctly noted that Rule 52(b) has no applicability to Plaintiffs' post-judgment motion. The court went on to hold, however, that it was bound by its own precedents to treat a motion to vacate an order of dismissal, even one made on grounds collateral to the merits of the judgment, as a motion under Rule 59 and to treat it as though Plaintiffs had invoked Rule 59 rather than Rule 52.[4] Respondents respectfully submit that this jurisdictional issue should have been decided the other way.

Although there is dictum in the decisions of this Court that is supportive of the Ninth Circuit's characterization of Plaintiffs' post-judgment motion, the decisions that more directly address the question support the proposition that an attack on a judgment that is predicated upon the collateral issue of the district judge's supposed disqualification is not cognizable under Rule 59. *Compare Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 863 n.11 (1988) (suggesting that a motion to vacate a judgment after trial by reason of judge's disqualification might be brought as part of motion for new trial), *with White v. New Hampshire Dep't of Employment Sec.*, 455 U.S. 445, 451 (1982) (motion collateral to the merits of judgment not cognizable under Rule 59) *and In re Cement Antitrust Litig.*, 673 F.2d 1020, 1027 (9th Cir. 1981) (disqualification motion is collateral to merits),

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resolution of a motion under Fed. R. Civ. P. 60 was not yet in effect at the time plaintiffs filed their notice of appeal below.

[4] In so concluding, the court of appeals appears to have overlooked some of its own precedents that suggest a contrary result. Thus, the Ninth Circuit has held in earlier decisions that a motion to alter or amend a judgment under Rule 59(e) is one that seeks "a substantive change of mind by the court." *Miller v. Transamerican Press, Inc.*, 709 F.2d 524, 527 (9th Cir. 1983). A motion collateral to the merits seeks no such change of mind.

aff'd, 459 U.S. 1190 (1983). Plaintiffs' post-judgment motion is properly characterized as a motion under Rule 60, not Rule 59, and, as such, did not invoke Rule 4(a)(4) of the Federal Rules of Appellate Procedure and preserve appellate jurisdiction.

REASONS FOR DENYING THE WRIT

Plaintiffs' Petition commences (pages 4 to 13) with a lengthy exposition of the many sins committed by BCCI around the globe and of the worldwide notoriety generated by the revelation of those sins.[5] Having established the fact that BCCI was a bad bank—a fact that Respondents do not dispute—Plaintiffs then suggest that the conclusion of the court of appeals that they lack standing to prosecute their RICO claims provides solace to wicked foreigners and invites an explosion of transnational criminal activity:

> [The Ninth Circuit's decision] will create a gaping loophole in the ability of *all* U.S. citizens to protect themselves from or remedy injuries caused by offshore financial fraud. If uncorrected, the decision of the court below means that financial criminals can

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[5] In their exposition of BCCI's criminal activities and their consequences, Plaintiffs omit the fact that the depositor losses for which recovery is sought in this action did not take place in the United States. The Joint Provisional Liquidators of BCCI and the Superintendent of Banking of California have reported that BCCI assets at the U.S. agencies far exceed the deposit liabilities, and that deposits at the agencies will be completely repaid. Thus, as the Assistant Attorney General in charge of the Criminal Division of the Department of Justice, Robert Mueller, reported to Congress:

> "Whatever massive fraud may have been perpetrated against depositors overseas, no such fraud occurred in the United States. And whatever massive losses depositors may have suffered overseas, no such losses occurred here."

Respondents' Appendix ("Res. App.") 2a; *see also* footnotes 4, 37 and 43 and related text in the district court's opinion (Ptr. App. A-27, -51 and -58).

> operate from offshore secrecy jurisdictions with impunity.

Petition at 16.

The decision below will, of course, do nothing of the sort.

The decision below opens no "gaping loophole" for transnational thieves. Indeed, the decision does not rely *at all* on the international character of BCCI for its treatment of Plaintiffs' RICO claims.[6] It was not the offshore nature of BCCI's criminal conduct that led the court of appeals to conclude that Plaintiffs lacked standing; it was the fact that Plaintiffs were indirect, and not direct, victims of that conduct. The court of appeals has not created a haven for offshore criminals. It has simply applied —and applied properly—this Court's holding in *Holmes v. Securities Investor Protection Corp.*, 503 U.S. at 268, that a civil RICO claim requires that a claimant plead and prove that the injuries claimed were proximately caused by the RICO violations alleged.

I. THE DECISION BELOW PROPERLY APPLIED *HOLMES v. SIPC* TO AFFIRM THE DISMISSAL OF PLAINTIFFS' CLAIMS FOR LACK OF STANDING

In its discussion of RICO standing, the decision below commences with the observation that, under this Court's decision in *Holmes*, Plaintiffs were required to plead that "the defendants' violation of section 1962 was the proximate cause of their injury." Ptr. App. A-16. The court went on to observe that some of the predicate acts pleaded in Plaintiffs' Third Amended Complaint would have tended to increase, rather than decrease, BCCI's assets and, hence, the bank's ability to repay its deposi-

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[6] The district court had found a lack of subject matter jurisdiction due to the overwhelmingly foreign nature of BCCI's operation and the lack of any injury to depositors in the U.S. agencies of BCCI. The Ninth Circuit found it unnecessary to reach that issue.

tors.[7] For those violations, not even "but for" causation is present. Other wrongs alleged would have diminished the bank's assets and satisfied "but for" causation, but the causal connection alleged between those wrongs and depositor losses was *indirect* and did not supply proximate causation.

Since a depositor and his bank are in a creditor/debtor relationship, *Bank of Marin v. England*, 385 U.S. 99, 101 (1966), the court of appeals observed that the claims here are merely the complaint by creditors that their debtor was the victim of wrongdoing and now cannot repay its debts. Under well-established principles, such creditor claims are derivative and are not assertable by the creditor. *See, e.g., Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 640-41 (9th Cir. 1988); *In re Sunrise Sec. Litig.*, 916 F.2d 874, 880-82 (3d Cir. 1990); *see generally* 1B *Michie on Banks and Banking* § 69, at 101-03 (repl. vol. 1993).

In arguing for a different result here, Plaintiffs rely on the argument to which they gave principle weight below—the assertion that this case complains not of wrongdoing that rendered BCCI insolvent and thus affected all creditors equally (which they apparently concede would leave them without standing) but rather of acts of fraud that induced them to make their deposits in the failing bank in the first place.[8] Petition at 22-30. The court of ap-

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[7] Plaintiffs alleged, for example, that BCCI diverted hundreds of millions of dollars from First American Bank to itself. Complaint ¶ 350(aa), Ptr. App. A-323.

[8] Plaintiffs attempt to add a rhetorical flourish to this argument by asserting that the Ninth Circuit's proper rejection of it amounts to a holding that their RICO claims "belong to BCCI . . . [which] is outrageous and compels reversal." Petition at 15. This assertion misses the point. Plaintiffs have no RICO injury under *Holmes* and thus no RICO claim. This is not to suggest that the present BCCI Liquidators do not have claims of their own to assert (whatever the merits of those claims may be). Indeed, those Liquidators are currently pursuing such claims against many of the respondents herein. *See* Res. App. 3a to 19a.

peals properly rejected this attempt to avoid the proximate cause requirement of *Holmes*.

The key to Plaintiffs' argument is their attempt to characterize their claims here as fraud claims particular to them as depositors rather than claims of wrongdoing affecting all creditors generally through the insolvency of the bank. In fact, no such claim appears. Plaintiffs do *not* base their RICO claims on the allegation that they were induced to act to their detriment in reliance on any misrepresentation directed at them by any defendant.

This omission in the pleadings is plainly the result of tactical deliberation and not confusion, as is evidenced by the fact that Plaintiffs did *not* seek leave from the district court to amend further on this point.[9] Plaintiffs have not pleaded fraud because they could not predicate a viable RICO claim on such a theory. Given that virtually all the BCCI depositors in the putative class reside abroad, any misrepresentation on which they could base a fraud claim would almost certainly have occurred abroad as well, making it highly unlikely that the act of fraud that proximately caused the loss would have been a predicate act under RICO.[10]

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[9] Plaintiffs' lead counsel expressly recited this election at the hearing before the district court:

> Just as the Court at some point must come to the position where it makes up its mind and rules, I guess at some point a pleader has to reach a point where the pleader feels he's pleaded everything that he reasonably can and that what has been pled is legally and factually sufficient to support his case, and I think we're there.

Res. App. 21a.

[10] Indeed, the only allegations of reliance by any named plaintiff on any alleged misrepresentation are those in paragraph 18(f) of the Complaint (Ptr. App. A-122) which assert that plaintiff Philip Merz relied on a 1981 advertisement placed by BCCI in the *Arab News* (a Jeddah, Saudi Arabia, publication) and on material emanating from BCCI's Luxembourg operations in 1988.

In an attempt to surmount this substantive impediment to their RICO theory, Plaintiffs elected *not* to plead that they relied upon misrepresentations that constitute U.S. mail or wire fraud—that is that they were *themselves* defrauded—but rather chose to present the claim that they were injured because *others* (principally bank regulators) were defrauded. The indirect nature of Plaintiffs' "fraud" theory is spelled out in their allegations respecting the causal nexus between their claimed injury and the twenty-eight predicate acts set forth in paragraphs 350(a)-(ag) of their Third Amended Complaint. For each of the predicate acts, the alleged causation is the same, or substantially so: the predicate acts

> helped the BCCI criminal enterprise to continue to operate. . . . BCCI would not have been able to continue its illegal operations and, thus, would not have been able to obtain Plaintiffs' deposits when it did . . . had these and other predicate acts not occurred. Each Plaintiff was thus defrauded into placing his, her or its money into a criminal enterprise instead of into a legitimate bank.

See, e.g., Complaint ¶ 350(f), Ptr. App. A-281-82.

In short, Plaintiffs use the term "fraud" to describe their allegation that BCCI was able to keep operating—and, hence, to continue to accept deposits—by hiding its wrongdoing from public scrutiny. By saying that they were "defrauded," Plaintiffs are simply claiming that their losses derive, not solely from the looting of BCCI itself, but also from the steps taken to conceal that looting—*i.e.*, (1) falsification of financial data regarding BCCI that kept its regulators at bay (*e.g.*, Complaint ¶ 350(m), Ptr. App. A-295-96); or (2) unlawful looting of other institutions, or other unlawful obtaining of funds, to maintain the illusion of solvency for the same purpose (*e.g.*, Complaint ¶ 350(y), Ptr. App. A-318-19).[11]

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[11] It is this formulation of "fraud" that is then parroted in the allegations, stated identically as to each individual plaintiff, that

This semantic shift in emphasis from the looting of BCCI itself to the steps allegedly taken to conceal that looting does not convert Plaintiffs' derivative claims to direct claims and does not turn "but for" causation into proximate causation. Virtually all looting cases will have an associated concealment case; thieves do not advertise their theft. If the simple rubric of shifting the focus of the Complaint from the looting itself to the inevitable cover-up gave standing—without regard to whether the claimant could plead and prove reliance on some misrepresentation directed at the claimant—the prohibitions against derivative and indirect RICO claims would cease to have practical significance.[12]

This precise argument was rejected by the Third Circuit in a decision that the court below properly characterized as persuasive, *In re Sunrise Securities Litigation*, 916 F.2d at 883.[13] In *Sunrise*, depositors of a savings

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each plaintiff "was defrauded into placing his deposits into a criminal enterprise." Complaint ¶ 18(a)-(m), Ptr. App. A-115 to A-132.

[12] Plaintiffs urged the same "fraud" characterization of their claims in *United States v. BCCI Holdings (Luxembourg), S.A.* Crim. No. 91-0655 (JHG) (D.D.C.), in an effort to lay claim to the funds subject to forfeiture. In arguing in its opposition that the circumstances here pleaded cannot make out a claim of fraud, the Department of Justice cogently observed:

> If it did, there would almost never be such a thing as a general creditor of a failed bank. Indeed, every depositor of an institution that failed as a result of unsound or fraudulent practice on the part of its directors would be entitled to claim that he or she was entitled to the return of the full value of his or her deposits instead of the pro rata distribution made by the bank's liquidator in such instances.

Res. App. 23a. Indeed, in that case, Plaintiffs later conceded that they were, in fact, simply general creditors of BCCI. *United States v. BCCI Holdings (Luxembourg), S.A.*, 833 F. Supp. 9, 13 (D.D.C. 1993), *aff'd*, 46 F.3d 1185, *cert. denied*, —— U.S. ——, 115 S. Ct. 2613 (1995).

[13] Plaintiffs' attempts to distinguish *Sunrise* are unpersuasive. Their grounds are that: (1) it involved a motion for summary

and loan brought a RICO action against its directors, officers, auditors and outside counsel arising from the insolvency and federal takeover of the savings and loan. In an attempt to avoid dismissal of their claims on the ground that they were merely derivative of the institution's claims, Plaintiffs asserted there—as Plaintiffs do here—that their claims stemmed from defendants' concealment of the events causing the insolvency and their misrepresentation that the savings and loan was a secure and well run institution. Defendants' conduct, it was argued, "directly" injured the depositors and thus was not of a derivative nature. The district court disagreed, however, and granted summary judgment for the defendants. The Third Circuit affirmed, explaining:

> Plaintiffs lack standing to bring an individual suit against defendants on the basis of conduct that primarily injured Old or New Sunrise and only indirectly injured depositors because such a claim belongs to the institutions. We do not believe that plaintiffs can sidestep this prohibition for purposes of stating a RICO claim merely by framing their allegations as misrepresentations and the failure to disclose information. To hold otherwise would eviscerate RICO's standing requirement of injury to plaintiff's business or property by reason of the RICO violation.

916 F.2d at 883 (citations omitted); *see Leach v. Federal Deposit Ins. Corp.*, 860 F.2d 1266, 1273-74 (5th Cir. 1988) (shareholders do not have standing to bring RICO claims against former directors and officers of a bank for mismanagement and concealment of the bank's financial condition), *cert. denied*, 491 U.S. 905 (1989); *Crocker v. Federal Deposit Ins. Corp.*, 826 F.2d 347,

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judgment, not a motion to dismiss; (2) in *Sunrise* concealed mismanagement, not criminal looting, caused the loss; and (3) the FDIC was receiver in that case. Petition at 27 & n.26. Why any of these facts alters the analysis is a mystery that Plaintiffs make no attempt to explain.

350-52 (5th Cir. 1987) (same), *cert. denied*, 485 U.S. 905 (1988).

A clear illustration of the deficiency in Plaintiffs' claims on this score may be found by comparing *Sunrise*—where the Third Circuit found the claims to be derivative—with *University of Maryland v. Peat Marwick Main & Co.*, 923 F.2d 265 (3d Cir. 1991)—where the same circuit found *different* claims to be direct. An important difference, the court of appeals explained, was that the latter claims contained the traditional elements of a claim of fraud lacking in *Sunrise*:

> In the instant case, by contrast [to *Sunrise*], the policyholders do not allege that PMM's actions caused Mutual Fire's insolvency, but rather that PMM wrongfully certified Mutual Fire's financial statements, *upon which the policyholders relied to their detriment.* In such a case, the policyholders have standing to sue PMM.

923 F.2d at 274 (emphasis added).

Ocean Energy II, Inc. v. Alexander & Alexander, Inc., 868 F.2d 740 (5th Cir. 1989), cited by Plaintiffs themselves (Petition at 26 n.41), provides another example of this critical distinction. There the court dismissed as derivative creditors' RICO claims where the gravamen of the claim was unlawful conduct damaging to the debtor and allowed only those claims that were based on traditional fraud allegations. *Id.* at 746-47.

Koch Refining v. Farmers Union Cent. Exch., Inc., 831 F.2d 1339 (7th Cir. 1987), *cert. denied*, 485 U.S. 906 (1988), presents the same analysis framed in terms of "personal" claims assertable directly by the creditor and "general" claims assertable only by the debtor estate:

> A cause of action is 'personal' if the claimant himself is harmed and no other claimant or creditor has an interest in the cause. But allegations that could

> be asserted by any creditor could be brought by the trustee as a representative of all creditors. If the liability is to all creditors of the corporation without regard to the personal dealings between such officers and such creditors, it is a general claim.

Id. at 1348-49.

In the words of the *Koch* court, a claim that depositors were "defrauded" by the mere existence of BCCI is a claim that could be asserted by any creditor. It is general, not personal—indirect, not direct.[14]

Permitting claims by indirectly injured creditors such as these, in circumstances in which the Liquidators of BCCI are actively pursuing litigation against many of the parties named here as defendants, would not only potentially burden the courts of this country with the adjudication of the claims of one million BCCI depositors; it would also inject a huge element of complexity into ongoing litigation in this and other countries. As this Court observed in *Holmes*:

> [R]ecognizing claims of the indirectly injured would force courts to adopt complicated rules apportioning

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[14] *Accord Downriver Community Fed. Credit Union v. Penn Square Bank*, 879 F.2d 754 (10th Cir. 1989) ("Any remedy that affects, or potentially affects, all creditors belongs to the receiver, who asserts such claims for the benefit of all creditors."), *cert. denied*, 493 U.S. 1070 (1990); *Adato v. Kagan*, 599 F.2d 1111, 1117 (2d Cir. 1979) ("[a]s a general rule, wrongdoing by bank officers that adversely affects all depositors creates a liability which is an asset of the bank, and only the bank or its receiver may sue for its recovery. . . . Individual depositors may sue in their own right, however, if they have suffered a wrong that is distinctly theirs and not common to all"); *Manson v. Stacescu*, 11 F.3d 1127, 1131 (2d Cir. 1993) (plaintiff shareholder and creditors of corporation denied standing under RICO to sue second shareholder and other defendants inside and out of the corporation because a creditor's injury is derivative of the corporation's and a shareholder similarly lacks standing unless the injury sustained is separate and distinct from that suffered by the corporation), *cert. denied*, 115 S. Ct. 292 (1994).

> damages among plaintiffs removed at different levels of injury from the violative acts, to obviate the risk of multiple recoveries. . . . [T]he need to grapple with these problems is simply unjustified by the general interest in deterring injurious conduct, since directly injured victims can generally be counted on to vindicate the law as private attorneys general, without any of the problems attendant upon suits by plaintiffs injured more remotely.

503 U.S. at 269-70 (citations omitted).[15]

II. THE DECISION BELOW IS WHOLLY CONSISTENT WITH THOSE OF OTHER CIRCUITS

Plaintiffs have not identified a single circuit decision that is at variance with either the holding or the reasoning of the Ninth Circuit here. The conflict in the circuits asserted by Plaintiffs simply does not exist.

The distinction discussed above between the claims pleaded here and fraud claims explains the difference in the result below and the result in most of the cases cited by Plaintiffs as examples of contrary decisions of other circuits. The decision of the Third Circuit in *University of Maryland v. Peat Marwick Main & Co.*, 923 F.2d 265 (3d Cir. 1991), and that of the Fifth Circuit in *Ocean Energy II v. Alexander & Alexander, Inc.*, 868 F.2d 740 (5th Cir. 1989), have already been discussed. The Third Circuit's decisions in *Hayes v. Gross*, 982 F.2d 104 (3d

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[15] The Ninth Circuit observed that these considerations applied here (Ptr. App. A-20), and similar attempts by these same named plaintiffs to pursue claims outside the BCCI liquidation proceedings in other proceedings have been rejected by the courts in those proceedings in part because their attempt to get ahead of other creditors in line would cause a "gargantuan disruption of the global liquidation proceedings currently underway" and would require the court to adjudicate the claims of approximately one million depositors. *United States v. BCCI Holdings (Luxembourg), S.A.*, 833 F. Supp. 9, 14 (D.D.C. 1993), *aff'd*, 46 F.3d 1185, *cert. denied*, 115 S. Ct. 2613 (1995).

Cir. 1992), and *Riley v. Simmons*, 45 F.3d 764 (3d Cir. 1995), and the Fourth Circuit's decision in *Howard v. Haddad*, 916 F.2d 167 (4th Cir. 1990), are securities fraud cases in which plaintiffs were the investor targets of the fraud alleged, and not merely one of the many creditors derivatively and similarly injured by the insolvency of their debtor.

The Seventh Circuit's decision in *In re EDC, Inc.*, 930 F.2d 1275 (7th Cir. 1991), involved a fraud case involving mail and wire fraud directed at plaintiffs, complicated only by the fact that the plaintiffs were the first victims of a fraud that allegedly had as its ultimate goal the derivative defrauding of a governmental institution. *Id.* at 1279 (defendant "had to fool EDC's creditors [plaintiffs] in order to keep EDC going long enough to get the Pension Benefit Guaranty Corporation off [defendant's] back.").

The Seventh Circuit's decisions in *Ashland Oil, Inc. v. Arnett*, 875 F.2d 1271 (7th Cir. 1989), and *Sutliff, Inc. v. Donovan Cos., Inc.*, 727 F.2d 648 (7th Cir. 1984), are distinguishable on somewhat different grounds, as is the decision of the Second Circuit in *GICC Capital Corp. v. Technology Fin. Group*, 30 F.3d 289 (2d Cir. 1994). In each of those cases, the creditor-plaintiffs alleged that the debtor had been used as the tool of the defendants to cause an injury directed specifically at them and not at the debtor's creditors generally. As the Seventh Circuit noted in *Ashland*, the fact that plaintiffs' injury (their theft of plaintiffs' products) was distinct from that of other creditors was critical. *Id.* at 1280. That circumstance is not present here.[16]

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[16] Plaintiffs also cite *Caplin v. Marine Midland Grace Trust Co.*, 406 U.S. 416 (1972), as being inconsistent with the decision below. It is not. In *Caplin*, this Court addressed the question of whether a bankruptcy trustee had standing to bring an action against an indenture trustee for breach of obligations *owed to debenture holders* under the indenture and the Trust Indenture Act of 1939, 15 U.S.C. § 77aaa *et seq.* *Id.* at 425. The rights of the debenture

III. THE DECISION BELOW IS NOT IN CONFLICT WITH THIS COURT'S DECISION IN *NOW*

Plaintiffs also contend that the decision of the Ninth Circuit is in conflict with this Court's decision in *NOW* since Plaintiffs' prolix Third Amended Complaint contained, in addition to the specific allegations on which the Ninth Circuit based its decision, the conclusory allegation that they were injured in their business or property by reason of the alleged wrongdoing. It is apparently Plaintiffs' reading of *NOW* that it was this Court's intention that the talismanic recitation of such a conclusion insulates a RICO plaintiff from dismissal no matter how clearly the specific facts pleaded demonstrate the absence of proximate causation. Respondents find no such absurdity in the Court's decision.

Although conclusory pleadings may suffice to state a claim for relief under the liberal rules of federal notice pleading, it is well-established that such conclusory pleadings will not save a claim if the complaint also contains specific pleadings demonstrating its lack of merit. This principle was recently expressed by Chief Judge Posner of the Seventh Circuit about as well as it can be stated:

> [T]he Federal Rules of Civil Procedure do not require that a complaint describe the alleged wrongdoing of which it complains with any particularity. But if a Plaintiff does plead particulars, and they show that he has no claim, then he is out of luck—he has pleaded himself out of court. He is not saved by having pleaded a legal conclusion that if consistent with the facts would establish his right to relief, for he has shown that it is inconsistent with the facts.

Thomas v. Farley, 31 F.3d 557, 558-59 (7th Cir. 1994) (citations omitted).

There is nothing in *NOW* that suggests that this Court intended to overturn this sound principle. The portion of

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holders were direct and not derivative of any obligation owed to the debtor.

the Court's holding on which Plaintiffs rely is only that "general factual allegations of injury resulting from the defendant's conduct *may* suffice. . . ." —— U.S. ——, 114 S. Ct. at 803 (emphasis supplied). In so holding, the Court did no more than reaffirm the principle that well pleaded facts, even if sketchy, are deemed to be true in the context of a motion to dismiss.[17] The Court did not announce a special rule for pleading RICO standing that abrogates *Holmes*' prohibition of indirect claims—the claims in *NOW* were concededly direct. Nor did the Court suggest that, where (as here) the allegations are not general alone but include allegations of the specific basis for the general claim of causation, the courts must analyze the sufficiency of the pleadings with blinders on and ignore the deficiencies that render the claims unviable. The desperate assertion that such was the Court's intent in *NOW* only illustrates the bankruptcy of Plaintiffs' other arguments.

CONCLUSION

For the foregoing reasons, the petition should be denied.

Respectfully submitted,

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[17] The Court did not approve the use of bare legal conclusions in *NOW*. In upholding the sufficiency of the pleadings, the Court observed that the complaint included the specific allegations that "respondents conspired to use force to induce clinic staff and patients to stop working and obtain medical services elsewhere . . . . In addition, petitioners claimed that respondent Scheidler threatened DWHO's clinic administrator with reprisals if she refused to quit her job at the clinic. . . ." —— U.S. at ——; 114 S. Ct. at 803.

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Dated: December 1, 1995

APPENDIX

APPENDIX

[DoJ Logo]

DEPARTMENT OF JUSTICE

TESTIMONY OF

ROBERT S. MUELLER III
ASSISTANT ATTORNEY GENERAL

BEFORE THE

SENATE COMMITTEE ON FOREIGN RELATIONS
SUBCOMMITTEE ON TERRORISM, NARCOTICS,
AND INTERNATIONAL OPERATIONS

NOVEMBER 21, 1991

* * * *

[10] . . . . And the Federal Reserve, to its immense credit did its job. Unlike many of the nations in which BCCI did business, the United States did not permit BCCI to take deposits from its citizens. Whatever massive fraud may have been perpetrated against depositors overseas, no such fraud occurred in the United States. And whatever massive losses depositors may have suffered overseas, no such losses occurred here.

While BCCI may have acquired secret interests in several federally-insured American banks, notwithstanding the efforts of the Fed, the exposure of American citizens to financial losses could have been dramatically higher. The Federal Reserve refused time and again to permit BCCI to accept any deposits in the United States. What agencies and branches it was permitted to open were allowed only to make loans and otherwise to serve the customers of its overseas offices. American depositors

were thus spared the devastating personal losses caused by the bank in other countries around the world.

The work of the Federal Reserve has been largely overlooked in the rush to criticize the federal government's performance in the BCCI matter. What is also overlooked, however, is that the Department of Justice is not a bank regulatory agency. The Department of Justice does not audit or examine banks. It has no power to regulate the conduct of banks, or even to close them in the wake of criminal activity. It must prove its charges beyond a reasonable doubt, not according to the lower civil standard of proof enjoyed by bank regulators.

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

CH 1992-B-No. 2591

BETWEEN:

BANK OF CREDIT AND COMMERCE INTERNATIONAL HOLDINGS (LUXEMBOURG) SA
Plaintiff

- and -

(1) ERNST & WHINNEY (a firm carrying on business in England and elsewhere in the world)

(2) ERNST & YOUNG (a firm carrying on business in England and elsewhere in the world)

(3) ERNST & WHINNEY (a firm)

(4) ERNST & YOUNG (a firm)

(5) ERNST & WHINNEY Societe Civile

(6) ERNST & YOUNG Societe Civile

(7) MONTBRUN, ERNST & YOUNG S.A R.L.

(8) KENNETH HAY

(9) GUY HORNICK

(10) ROGER DILLIEN

(11) LUDO SWOLFS

(12) JAN DE DECKER

(13) J DAVID HUMPHREYS

(14) DANIEL VAN CUTSEM

(15) E.O.M. EILLEDGE (sued in his personal capacity and on behalf of himself and of all the other members of and/or all other persons carrying on the business (inter alia) of accountants, auditors and advisers under the names of the Defendants (1) to (7) above)

Defendants

TO THE DEFENDANTS:

The First and Third Defendants Ernst & Whinney and the Second and Fourth Defendant Ernst & Young each of whose place of business is at Becket House, 1 Lambeth Palace Road, London SE1 7EU

The Fifth Defendant Ernst & Whinney Societe Civile whose registered office is at 25B Boulevard Royal, 2449 Luxembourg

The Sixth Defendant Ernst & Young Societe Civile whose registered office is at 6 Avenue Emile Reuter, 2420 Luxembourg

The Seventh Defendant Montbrun, Ernst & Young S.A R.L. whose registered office is at 11 Boulevard du Prince Henri, 1724 Luxembourg

The Eighth Defendant Kenneth Hay, the Ninth Defendant Guy Hornick, the Tenth Defendant Roger Dillien, the Eleventh Defendant Ludo Swolfs each of whose place of business is Avenue Emile Reuter, 2420 Luxembourg

The Twelfth Defendant Jan de Decker, whose address is Stationstraat 24, B-9308 Gijzegem, Belgium

The Thirteenth Defendant J David Humphreys whose address is Chemin des Messes, 26, B-1380 Lasne, Belgium

The Fourteenth Defendant Daniel Van Cutsem whose address is Nachtegalenlaan 76, B-3080 Tervuren, Belgium

The Fifteenth Defendant E.O.M. Eilledge whose place of business is at Becket House, 1 Lambeth Palace Road, London SE1 7EU

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out overleaf.

Within 14 days after the service of this Writ on the First to Fourth Defendants inclusive and the Fifteenth Defendant and within 21 days after the service of this Writ on

the Fifth to Fourteenth Defendants inclusive, counting the day of service, you must either satisfy the claim or return to the Court Office mentioned below the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued from the Chancery Chambers of the High Court this 6th day of March 1992.

NOTE: This Writ may not be served later than 4 calendar months (or if leave is required to effect service out of the jurisdiction, 6 months) beginning with that date unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

The Plaintiff which is a company duly constituted and incorporated under the laws of the Grand Duchy of Luxembourg is and was at all material times entitled and empowered by the laws of the said Grand Duchy to make the contract hereafter mentioned and to sue and be sued in its name above-mentioned, claims against the Defendants for:—

(1) damage and/or compensation for negligence and/or breach of duty and/or breach of contract and/or breach of statutory duty in and about: —

(a) their agreement to audit and/or their audit of and/or their participation in the audit of the Plaintiff in respect of its financial year ending 31st December 1986;

(b) their agreement to prepare and/or their preparation of and/or their participation in the preparation of, accounts and/or financial statements and/or reports and/or reviews on and in relation to the Plaintiff and/or its business and affairs in respect of its financial year ending 31st December 1986;

(c) their provision of auditing and/or accounting and/or other related or allied services to the Plaintiff during the 3 month period immediately after the year ending 31st December 1986;

(2) interest;

(3) costs;

(4) further and other relief.

This Court has power under and by virtue of the Civil Jurisdiction and Judgments Act 1982 to hear and determine the claims made in this writ and no proceedings involving the same causes of action are pending between the parties in Scotland, Northern Ireland or any other Contracting State as defined in Section 1(3) of that Act.

This Writ was issued by Lovell White Durrant of 65 Holborn Viaduct, London EC1A 2DY, reference L1/JMcK/APT, solicitors for the said Plaintiff which is a company duly constituted and incorporated under the laws of the Grand Duchy of Luxembourg and whose registered office is at 39 Boulevard Royal, 2449 Luxembourg. The writ is issued on the authority of the Plaintiff's board and with the approval of the Commissaires appointed by the Luxembourg Court on 1st August 1991.

/s/ Lovell White Durrant
Solicitors for the Plaintiff

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

BETWEEN:

BANK OF CREDIT AND COMMERCE
INTERNATIONAL HOLDINGS
(LUXEMBOURG) SA

Plaintiff

- and -

(1) ERNST & WHINNEY (a firm carrying on business in England and elsewhere in the world)

AND OTHERS

Defendants

WRIT AND STATEMENT OF CLAIM

Lovell White Durrant
65 Holborn Viaduct
London EC1A 2DY

Tel: 071-236 0066
Ref: L1/JMcK/APT

Solicitors for the Plaintiff

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

BETWEEN:

(1) BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) LIMITED (IN LIQUIDATION)

(2) BANK OF CREDIT AND COMMERCE INTERNATIONAL HOLDINGS (LUXEMBOURG) S.A.

(3) BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A. (IN LIQUIDATION)

Plaintiffs

—and—

(1) PRICE-WATERHOUSE (a firm carrying on business in England and elsewhere in the world)

(2) PRICE-WATERHOUSE (a firm)

(3) PRICE WATERHOUSE (a firm having a place of business in the Cayman Islands and carrying on business, inter alia, in England)

(4) CHRISTOPHER COWAN

(5) EDWARD WILSON HOULT

(6) RICHARD PHILIP KILSBY

(7) CHRISTOPHER BULL

(8) RONALD WALTER WHITE

(9) M.E. AUSTEN

(10) RICHARD WILLIAM HARRIS

(11) RICHARD PEEK

(12) TREVOR GORMAN

(13) ERNEST GRINROD

(14) MAITLAND CATES

(15) BARRY NOTTAGE

(16) THOMAS HACKETT

(17) LENWORTH SMITH

(18) IAN BRINDLE (sued in his personal capacity and on behalf of himself and of all the other members of and/or all other persons carrying on the business (inter alia) of accountants, auditors and advisers under the names of the Defendants (1) to (3) above)

(19) PRICE WATERHOUSE INTERNATIONAL also known as PRICE WATERHOUSE WORLD FIRM (a firm registered in Bermuda and carrying on business in England and elsewhere in the world)

(20) ERNST & WHINNEY (a firm carrying on business in England and elsewhere in the world)

(21) ERNST & YOUNG (a firm carrying on business in England and elsewhere in the world)

(22) ERNST & WHINNEY (a firm)

(23) ERNST & YOUNG (a firm)

(24) ERNST & WHINNEY Societe Civile

(25) ERNST & YOUNG Societe Civile

(26) MONTBRUN, ERNST & YOUNG S.A R.L.

(27) KENNETH HAY

(28) GUY HORNICK

(29) ROGER DILLIEN

(30) LUDO SWOLFS

(31) JAN DE DECKER

(32) J DAVID HUMPHREYS

(33) DANIEL VAN CUTSEM

(34) C.E.G. CARTWRIGHT

(35) G.R. SMITH

(36) E.O.M. EILLEDGE (sued in his personal capacity and on behalf of himself and of all the other members of and/or all other persons carrying on the business (inter alia) of accountants, auditors and advisers under the names of the Defendants (20) to (26) above)

Defendants

TO THE DEFENDANTS:

The First, Second and Third Defendants Price Waterhouse each of whose place of business is at Southwark Towers, 32 London Bridge Street, London SE1 9SY

The Fourth Defendant Christopher Cowan whose address is 36 Plantation Road, The Peak, Hong Kong

The Fifth Defendant Edward Wilson Hoult, the Sixth Defendant Richard Philip Kilsby, the Seventh Defendant Christopher Bull, the Eighth Defendant Ronald Walter White and the Ninth Defendant M.E. Austen each of whose place of business is at Southwark Towers, 32 London Bridge Street, London SE1 9SY

The Tenth Defendant Richard William Harris whose place of business is at British American Centre, PO Box 258, George Town, Grand Cayman

The Eleventh Defendant Richard Peek whose address is Lime Tree Bay, PO Box 258, West Bay Road, Cayman Islands and/or PO Box 30144, Seven Mile Beach, Grand Cayman

The Twelfth Defendant Trevor Gorman whose address is West Bay Street, PO Box N-1516, Nassau, Bahamas and/or 8 Springbank, Eversley Park Road, Winchmore Hill, London N21 1JM

The Thirteenth Defendant Ernest Grinrod whose address is Bay View, East Bay Street, PO Box 55-6882, Nassau, Bahamas

The Fourteenth Defendant Maitland Cates whose address is Chancery House, Corner of Hall and Explorers' Way, PO Box F2415, Freeport, Bahamas

The Fifteenth Defendant Barry Nottage whose address is Eastern Road, Winton Highway, PO Box N7775, Nassau, Bahamas

The Sixteenth Defendant Thomas Hackett whose address is Providence House, PO Box N-3910, Nassau, Bahamas

The Seventeenth Defendant Lenworth Smith whose address is Providence House, PO Box N-3910, Nassau, Bahamas

The Eighteenth Defendant Ian Brindle whose place of business is at Southwark Towers, 32 London Bridge Street, London SE1 9SY

The Ninteenth Defendant Price Waterhouse International whose place of business is at Southwark Towers, 32 London Bridge Street, London SE1 9SY

The Twentieth and Twenty-second Defendants Ernst & Whinney and the Twenty-first and Twenty-third Defendants Ernst & Young each of whose place of business is at Becket House, 1 Lambeth Palace Road, London SE1 7EU

The Twentieth-fourth Defendant Ernst & Whinney Societe Civile whose registered office is at 25B Boulevard Royal, 2449 Luxembourg

The Twenty-fifth Defendant Ernst & Young Societe Civile whose registered office is at 6 Avenue Emile Reuter, 2420 Luxembourg

The Twenty-sixth Defendant Montbrun, Ernst & Young S.A. R.L. whose registered office is at 11 Boulevard du Prince Henri, 1724 Luxembourg

The Twenty-seventh Defendant Kenneth Hay, the Twenty-eighth Defendant Guy Hornick, the Twenty-ninth Defendant Roger Dillien, the Thirtieth Defendant Ludo Swolfs, the Thirty-fourth Defendant C.E.G. Cartwright and the Thirty-fifth Defendant G.R. Smith each of whose place of business is at 6 Avenue Emile Reuter, 2420 Luxembourg

The Thirty-first Defendant Jan de Decker, whose address is Stationstraat 24, B-9308 Gijzegem, Belgium

The Thirty-second Defendant J David Humphreys whose address is Chemin des Messes, 26, B-1380 Lasne, Belgium

The Thirty-third Defendant Daniel Van Cutsem whose address is Nachtegalenlaan 76, B-3080 Tervuren, Belgium

The Thirty-sixth Defendant E.O.M. Eilledge whose place of business is at Becket House, 1 Lambeth Palace Road, London SE1 7EU

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs in respect of the claim set out overleaf.

Within 14 days after the service of this Writ on the First to Third, Fifth to Ninth, Eighteenth, Nineteenth, and Twentieth to Twenty-third Defendants inclusive and within 21 days after the service of this Writ on the Fourth, Tenth to Seventeenth, Twenty-fourth to Thirty-sixth Defendants inclusive, counting the day of service, you must either satisfy the claim or return to the Court Office mentioned below the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued from the Chancery Chambers of the High Court this 12th day of March 1992.

NOTE: This Writ may not be served later than 4 calendar months (or if leave is required to effect service out of the

jurisdiction, 6 months) beginning with that date unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

A. The First Plaintiff which is a company duly constituted and incorporated under the laws of the Cayman Islands is now in liquidation. The Plaintiff is and was at all material times entitled and empowered by the laws of the said Cayman Islands to make the contracts hereinafter mentioned and to sue and to be sued by its name above-mentioned, and claims against the First to Eighteenth Defendants for:

(1) damages and/or compensation for negligence and/or breach of duty and/or breach of contract and/or breach of statutory duty in and about:—

(a) their agreement to audit and/or their of audit of and/or their participation in the audit of the First Plaintiff in respect of its financial year ending 31st December 1985;

(b) their agreement to prepare and/or their preparation of and/or their participation in the preparation of accounts and/or financial statements and/or reports and/or reviews on and in relation to the Plaintiffs and/or their business and affairs in respect of their financial year ending 31st December 1985;

(c) their agreement to prepare and/or their preparation of and/or their participation in the preparation of a report to the directors of the First Plaintiff dated 18th March 1986;

(d) their preparation of and/or their review of and/or their reporting on and/or their participation in the review and/or preparation of accounts, reports and other information prepared in relation to the business and affairs of the Plaintiffs pursuant to a letter from the Institut Monetaire Luxembourgeois ("IML") to the directors of the Second Plaintiff dated 21st October 1985;

(e) their provision of auditing and/or accounting and/or other related or allied services to the Plaintiffs in and/or before 1986;

(2) interest;

(3) costs;

(4) further and other relief.

B. The First Plaintiff's claim against the Twentieth to Thirty-sixth Defendants is for:—

(1) damages and/or compensation for negligence and/or breach of duty and/or breach of contract and/or breach of statutory duty in and about:—

(a) their agreement to audit and/or their audit of and/or their participation in the audit of the Second and/or Third Plaintiffs in respect of their financial years ending 31st December 1985;

(b) their agreement to prepare and/or their preparation of and/or their participation in the preparation of accounts and/or financial statements and/or reports and/or reviews on and in relation to the Plaintiffs and/or their business and affairs in respect of their financial years ending 31st December 1985;

(c) their preparation of and/or their review of and/or their reporting on and/or their participation in the review and/or preparation of accounts, reports and other information prepared in relation to the business and affairs of the Plaintiffs pursuant to a letter from the IML to the directors of the Second Plaintiff dated 21st October 1985;

(d) their provision of auditing and/or accounting and/or other related or allied services to the Plaintiffs in and/or before 1986;

(2) interest;

(3) costs;

(4) further and other relief.

C. The Second Plaintiff is a company duly constituted and incorporated under the laws of the Grand Duchy of Luxembourg. The Third Plaintiff is a company duly constituted and incorporated under the laws of the Grand Duchy of Luxembourg and is now in liquidation. The Second and Third Plaintiffs are and were at all material times entitled and empowered by the laws of the said Grand Duchy to make the contracts hereinafter mentioned and to sue and to be sued by their names above-mentioned, and claim against the First to Eighteenth Defendants for:—

(1) damages and/or compensation for negligence and/or breach of duty and/or breach of contract and/or breach of statutory duty in and about:—

(a) their agreement to audit and/or their audit of and/or their participation in the audit of the First Plaintiff in respect of its financial year ending 31st December 1985;

(b) their agreement to prepare and/or their preparation of and/or their participation in

the preparation of accounts and/or financial statements and/or reports and/or reviews on and in relation to the Plaintiffs and/or their business and affairs in respect of their financial year ending 31st December 1985;

(c) their agreement to prepare and/or their preparation of and/or their participation in the preparation of a report to the directors of the First Plaintiff dated 18th March 1986;

(d) their preparation of and/or their review of and/or their reporting on and/or their participation in the review of and/or preparation of accounts, reports and other information prepared in relation to the business and affairs of the Plaintiffs pursuant to a letter from the IML to the directors of the Second Plaintiff dated 21st October 1985;

(e) their provision of auditing and/or accounting and/or other related or allied services to the Plaintiffs in and/or before 1986;

(2) interest;

(3) costs;

(4) further and other relief.

D. The Second and Third Plaintiffs' claim against the Twentieth to Thirty-six Defendants is for:

(1) damages and/or compensation for negligence and/or breach of duty and/or breach of contract and/or breach of statutory duty in and about:—

(a) their agreement to audit and/or their audit of and/or their participation in the audit of the Second and Third Plaintiffs in re-

spect of their financial years ending 31st December 1985;

(b) their agreement to prepare and/or their preparation of and/or their participation in the preparation of accounts and/or financial statements and/or reports and/or reviews on and in relation to the Plaintiffs and/or their business and affairs in respect of their financial years ending 31st December 1985;

(c) their preparation of and/or their review of and/or their reporting on and/or their participation in the review of and/or preparation of accounts, reports and other information prepared in relation to the business and affairs of the Plaintiffs pursuant to a letter from the IML to the directors of the Second Plaintiff dated 21st October 1985;

(d) their provision of auditing and/or accounting and/or other related or allied services to the Plaintiffs in and/or before 1986;

(2) interest;

(3) costs;

(4) further and other relief.

E. The Plaintiffs' claim against the Nineteenth Defendant is for:—

(1) damages and/or compensation for negligence and/or breach of duty in and about:—

(a) their maintenance and development of the ability and readiness of the First to Eighteenth Defendants to provide the highest standards of service both generally and specifically in relation to the matters set

out in paragraphs A(1)(a) to (e) and C(1)(a) to (e) above; and

(b) their establishment and maintenance of high and uniform standards of work and conduct by the First to Eighteenth Defendants both generally and specifically in relation to the matters set out in paragraphs A(1)(a) to (e) and C(1)(a) to (e) above;

(2) interest;

(3) costs;

(4) further and other relief.

This Court has power under and by virtue of the Civil Jurisdiction and Judgments Act 1982 to hear and determine the claims made in this writ against the Twenty-fourth to Thirty-sixth Defendants and no proceedings involving the same clauses of action pending between the parties in Scotland, Northern Ireland or any other Contracting state as defined in Section 1(3) of that Act.

/s/ Lovell White Durrant

This Writ was issued by Lovell White Durrant of 65 Holborn Viaduct, London EC1A 2DY, reference L1/JMcK/APT, solicitors for the said Plaintiffs.

The First Plaintiff is a company in liquidation, whose registered office is at Ansbacher House, Fort Street, George Town, Grand Cayman. The liquidators are Ian Wight, Robert Axford and Michael Mackey, all of Fort Street, PO Box 1359, Grand Cayman, Cayman Islands.

The Second Plaintiff's registered office is at 39 Boulevard Royal, 2449 Luxembourg. This writ is issued on the authority of the Plaintiff's board and with the approval of the Commissaires appointed by the Luxembourg Court on 1st August 1991.

The Third Plaintiff is a company in liquidation, whose registered office is at 25C Boulevard Royal, 2449 Luxembourg. The liquidators are Brian Smouha of Friary Court, 65 Crutched Friars, London EC3N 2NP, Georges Baden of 8 Boulevard Royal, 2449 Luxembourg and Julien Roden of 7 Avenue des Archiducs, 1135 Luxembourg.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV91-4483-CBM(EX)

AKHTAR HAMID, *et al.*,
Plaintiffs,

vs.

PRICE WATERHOUSE & CO., *et al.*,
Defendants.

Los Angeles, California
Monday, March 30, 1992
10:10 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE
CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE

* * * *

[10]

MR. LERACH: And of course, we would suggest that proximate cause is, in fact, a factual issue. There may be some circumstances under which it could be said to be lacking as a matter of law, but we don't think this case is one of those, and I would note that *Holmes* itself was a summary judgment opinion, not a motion to dismiss.

It is difficult to say to the Court that there is much more of significance that could be alleged in this complaint.

Just as the Court at some point must come to the position where it makes up its mind and rules, I guess at some point a pleader has to reach a point where the pleader feels he's pleaded everything that he reasonably can and that what has been pled is legally and factually sufficient to support his case, and I think we're there.

THE COURT: Does that—there were a couple of occasions where the Court said that it wasn't satisfied that the allegations were sufficient and invited Plaintiff to demonstrate this morning in your argument that, if given the opportunity to amend further, that in fact there would be something more that you could allege that might satisfy the problem that the Court identified.

* * * *

[Filed Jan. 27, 1993]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Criminal Number 91-0655 (JHG)
Defendants 01-04

UNITED STATES OF AMERICA

v.

BCCI HOLDINGS (LUXEMBOURG), S.A.; BANK OF CREDIT AND COMMERCE INTERNATIONAL, S.A.; BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) LIMITED; and INTERNATIONAL CREDIT AND INVESTMENT COMPANY (OVERSEAS) LIMITED,

Defendants

GOVERNMENT'S REPLY TO OPPOSITIONS TO MOTION TO DISMISS ROUND TWO PETITIONS OF BCCI TORT PETITIONERS

The United States of America, by and through its undersigned attorneys, makes this reply to the oppositions to the government's Motion to Dismiss Round Two Petitions of BCCI Tort Petitioners ("Motion to Dismiss") filed by the Central Reserve Bank of Peru ("Peru"), Lee and Patricia Scarfone, et al. ("Scarfone"), and the depositors in the California RICO Class Action against BCCI ("CRCA Petitioners").

I. BACKGROUND

On December 28, 1992, the government filed a Motion to Dismiss the Round Two claims of the three above-referenced Petitioners, arguing that the Petitioners lacked

standing to file a claim pursuant to 18 U.S.C. § 1963(1) (an "L-claim") and that Petitioners had failed to state any claim upon which relief could be granted.

* * * *

[25] . . . . If it did, there would almost never be such a thing as a general creditor of a failed bank. Indeed, every depositor of an institution that failed as a result of unsound or fraudulent practice on the part of its directors would be entitled to claim that he or she was entitled to the return of the full value of his or her deposits instead of the pro rata distribution made by the bank's liquidator in such instances. Without going into a lengthy recitation of legal precedents involving the FDIC's liquidation of failed banks in the United States, the government is confident in asserting that the theory advanced by the Petitioners does not accurately reflect the state of the law on this point.[12]

G. The Petitioners did not acquire any interest in BCCI's property as bona fide purchasers for value.

Finally, notwithstanding the holdings in *Lavin* and *Mageean, supra*, Peru and Scarfone persist in describing themselves as "bona fide purchasers for value" who are entitled to recover under § 1963(1)(6)(B). Peru Brief at 12; Scarfone Brief at 6. Having eschewed the status of "tort claimant," the Petitioners rely on *Reckmeyer*, which held that unsecured general creditors may be considered bona fide purchasers for purposes of § 1963(1). 836 F.2d at 208. Peru Brief at 15; Scarfone Brief at 7.

* * * *

---

[12] *See Langely v. FDIC*, 484 U.S. 86 (1987); *Kilpatrick v. Riddle*, 907 F.2d 1523 (5th Cir. 1990), *cert. denied* 111 S. Ct. 954 (1991); *FSLIC v. Gordy*, 928 F.2d 1558 (11th Cir. 1991).

Supreme Court, U.S.
FILED
DEC 1 1995
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(4)

No. 95-704

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

AKHTAR HAMID, *et al.*,
Petitioners,
v.
PRICE WATERHOUSE, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF FIRST AMERICAN CORPORATION, *et al.* IN OPPOSITION

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WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTION PRESENTED

Whether the Court of Appeals for the Ninth Circuit properly applied this Court's decisions in *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258 (1992), and *National Organization for Women, Inc. v. Scheidler*, 114 S. Ct. 798 (1994), in affirming the dismissal of RICO claims based on lack of standing where petitioners' alleged injuries were not proximately caused by the violations claimed.

PARTIES TO THE PROCEEDING

The respondents on this brief are First American Corporation, First American Bankshares, Inc., Jack W. Beddow, Paul G. Adams, III, and A. Vincent Scoffone.

Pursuant to this Court's Rule 29.6, following are the subsidiaries and former parent companies of those respondents that are corporations:

Credit & Commerce Amercian Investment, B.V.
Credit and Commerce American Holdings, N.V.
First American Bank of New York

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

No. 95-704

AKHTAR HAMID, *et al.*,
Petitioners,

v.

PRICE WATERHOUSE, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

BRIEF OF FIRST AMERICAN CORPORATION, *et al.* IN OPPOSITION

STATEMENT

Respondents First American Bankshares, Inc. ("FAB") and its parent, First American Corporation ("FAC") (collectively "First American"), were secretly and illegally acquired by the Bank of Credit and Commerce International and its affiliates (collectively "BCCI") through BCCI's acquisition of control of stock of the parent corporations of First American, Credit and Commerce American Investment, B.V. ("CCAI") and Credit and Commerce American Holdings, N.V. ("CCAH"). Respondents Jack W. Beddow, Paul G. Adams, III, and A. Vincent Scoffone were officers of FAB; Jack W. Beddow and A. Vincent Scoffone also were officers of FAC.

In 1992, BCCI pled guilty to criminal charges arising, *inter alia*, out of its illegal ownership of CCAH. *See* Plea Agreement, *United States v. BCCI Holdings (Luxembourg), S.A.*, Crim. No. 91-0655 (JHG) (D.D.C. Jan. 24, 1992). Pursuant to the Plea Agreement entered into by the United States, the State of New York and BCCI (through its court-appointed Fiduciaries), the United States District Court for the District of Columbia ordered the forfeiture of all of BCCI's assets in the United States, including BCCI's illegally acquired ownership interest in CCAH. The Plea Agreement further provides that a substantial portion of the forfeited assets will be distributed to a Worldwide Victims and Creditors Compensation Fund for the benefit of innocent creditors of BCCI.

In order to effectuate the forfeiture of BCCI's indirect interest in First American, the United States District Court has entered a number of orders resulting in the sale of all of the assets of FAB. On December 21, 1994, the United States District Court ordered the forfeiture of 61.156% of the amount distributable to CCAH shareholders as a consequence of the liquidation of FAB and FAC. Order of Forfeiture, *United States v. BCCI Holdings (Luxembourg), S.A.*, Crim. No. 91-0655 (D.D.C. Dec. 21, 1994). As a result of settlements entered with other shareholders of CCAH, an additional 37.601% of the available funds will be distributed for the benefit of BCCI creditors. Procedural Order, *United States v. BCCI Holdings (Luxembourg), S.A.*, Crim. No. 91-0655 (D.D.C. Dec. 21, 1994) at 15. Thus, more than two-thirds of the amounts distributable as a consequence of the liquidation of First American and its affiliates will be available for the benefit of BCCI creditors.

FAB and FAC have adopted Plans of Dissolution and are in liquidation. However, they have been prevented from making any liquidating distributions, which are a prerequisite to any distributions for the benefit of BCCI creditors, because of the pendency of this action, which

seeks damages in excess of First American's total assets. *Id.* at 10. Consequently, this action has prevented BCCI creditors—who are the very persons petitioners in this matter claim to represent—from obtaining substantial recoveries of the funds lost due to the insolvency of BCCI.

REASONS FOR DENYING THE WRIT

At issue in this case is whether the injuries alleged by petitioners, plaintiffs below, were sufficiently direct to confer standing on these petitioners to maintain a cause of action under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 19 U.S.C. §§ 1961-1968 (1994). In resolving this question, the court below applied the clear and well-established precedents of this Court. As a result, certiorari should be denied.

1. The conclusion reflected in the decision below—that indirect injuries are an inadequate basis for standing to press claims under RICO—is completely consistent with, and in fact faithfully implements, the decisions of this Court, including in particular this Court's decision in *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258 (1992). *See* Brief in Opposition of Respondents Price Waterhouse, *et al.* at 5-13. The decision below also is wholly consistent with the decisions of the other courts of appeals. *See id.* at 14-15.

2. Likewise, the decision below properly applies this Court's decision in *National Organization for Women, Inc. v. Scheidler*, 114 S. Ct. 798 (1994). Here, the specific facts petitioners included in their Complaint concerning the indirectness of their alleged injuries demonstrated that they were not advancing a claim for which relief could be granted. Although *Scheidler* instructs that "general factual allegations of injury" may be presumed to "embrace those specific facts that are necessary to support the claim," *id.* at 803, where the specific facts pleaded demonstrate that plaintiffs lack standing under RICO, the in-

clusion of general allegations will not permit the claims to proceed. *See* Brief in Opposition of Respondents Price Waterhouse, *et al.* at 15-17.

3. Finally, as set forth in the Brief of the Court Appointed Fiduciaries of BCCI, as Amicus Curiae, In Support of Respondents and In Opposition to Petition for Writ of Certiorari, and as the court below recognized (Pet. App. A20-A21), the present litigation is interfering with the orderly liquidation of First American and, consequently, BCCI, and thus is delaying payments to hundreds of thousands of BCCI creditors worldwide.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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December 1, 1995

No. 95-704

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1995

AKHTAR HAMID, SHRICHAND CHAWLA, SOHA, INC., IDRISS DEVCO, INC., S&L GENTRADE, INC., LEO D. CURRAN, NIAM MUSLEH, WILLY HERMANS, RED CIRCLE INVESTMENTS, LTD., SADIK MAHMOUD HASHIM, NUHA HUSSAIN MUBAREK, JALEH KHORASSANCHY, PHILIP MERZ and AMIT PANDYA, On Behalf Of Themselves and All Others Similarly Situated,

Petitioners,

v.

PRICE WATERHOUSE, PRICE WATERHOUSE/U.K., PRICE WATERHOUSE WORLD FIRM, LTD., PRICE WATERHOUSE/U.S., ERNST & YOUNG, ABU DHABI, EMIRATE OF ABU DHABI, ABU DHABI INVESTMENT AUTHORITY, BANK OF AMERICA CORPORATION, BANKAMERICA CORP., BANK OF AMERICA NT&SA, HILL & KNOWLTON, GRP INVESTMENTS, INTERREDEC, INC., INTERREDEC SOUTHERN CO., FIRST AMERICAN CORP., FIRST AMERICAN BANKSHARES, PAUL ADAMS, JACK BEDDOW, A. VINCENT SCOFFONE, T. BERTRAM LANCE, INDEPENDENCE BANK, MANUEL NORIEGA, FULVIO DOBRICH, ROBERT ALTMAN, CLARK CLIFFORD and CLIFFORD & WARNKE,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE COURT APPOINTED FIDUCIARIES OF BCCI, AS AMICUS CURIAE, IN SUPPORT OF RESPONDENTS

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In the Supreme Court of the United States

OCTOBER TERM, 1995

No. 95-704

AKHTAR HAMID, SHRICHAND CHAWLA, *et al.*,
Petitioners,

v.

PRICE WATERHOUSE, PRICE WATERHOUSE/U.K., *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE COURT APPOINTED FIDUCIARIES OF BCCI, AS AMICUS CURIAE, IN SUPPORT OF RESPONDENTS

The Court Appointed Fiduciaries of BCCI Holdings (Luxembourg), S.A. ("BCCI Holdings"), Bank of Credit and Commerce International, S.A. ("BCCI SA"), Bank of Credit and Commerce International (Overseas) Limited ("BCCI Overseas"), and International Credit and Investment Company (Overseas) Limited ("ICIC Overseas") (collectively referred to, for the purposes of this brief, as the "BCCI Group") hereby submit this brief as amicus curiae in support of respondents and in opposition to petitioners' request for a writ of certiorari. All parties to

this proceeding have consented to the filing of an amicus brief by the Court Appointed Fiduciaries.

INTEREST OF AMICUS CURIAE

The Court Appointed Fiduciaries are the liquidators of BCCI Holdings, BCCI SA, BCCI Overseas, ICIC Overseas and are charged by their appointing courts in Luxembourg, the Cayman Islands and the United Kingdom with responsibility for the collection of the BCCI Group's global assets and distribution of those assets to creditors and depositors worldwide. Pursuant to their appointments, the Court Appointed Fiduciaries have undertaken numerous responsibilities on behalf of the BCCI Group and their creditors and depositors, including:

1) Negotiation of a comprehensive Plea Agreement on behalf of the BCCI Group with United States prosecutors and regulators, the District Attorney of New York County, and state regulators;

2) Initiating and resolving claims against persons responsible for damage to the BCCI Group;

3) Litigation in United States courts concerning matters arising out of the Plea Agreement and resulting forfeiture; and

4) Defending the BCCI Group against actions filed by third parties.

The Court Appointed Fiduciaries file this amicus brief because petitioners' litigation in the United States threatens the orderly process by which the BCCI Group is being liquidated in Luxembourg, the Cayman Islands and the United Kingdom. That litigation has delayed the Court Appointed Fiduciaries' realization of millions of dollars of BCCI Group assets for distribution to creditors and depositors worldwide. In addition, petitioners, through this action, have sought to undermine the existing liquidations and the authority of the Court Appointed Fiduciaries

to pursue wrongdoers who have damaged the BCCI Group, for the collective benefit of all of the BCCI Group's creditors and depositors.

SUMMARY OF ARGUMENT

The Court Appointed Fiduciaries urge this Court to deny the petition for writ of certiorari because the courts below correctly found that the prolonged litigation of petitioners' claims interferes with the orderly liquidation of the BCCI Group by its duly appointed fiduciaries. The interposition of this action has frustrated the remission of funds from the United States for the benefit of creditors and depositors. Further, under the doctrine of comity as announced by this Court, denial of the petition would accord proper deference to the foreign liquidation proceedings. Those proceedings provide an appropriate and convenient forum for all BCCI Group creditors and depositors, including petitioners.

FACTUAL BACKGROUND

A. Liquidation Of The BCCI Group

Until July 1991, the BCCI Group was a worldwide banking organization, operating in sixty-nine countries. The parent company, BCCI Holdings, was a Luxembourg holding company which owned two principal operating subsidiaries, BCCI SA and BCCI Overseas. ICIC Overseas was a related corporation, whose affairs were controlled by the corrupt senior management of the BCCI Group.

On July 5, 1991, bank regulators in Luxembourg, the Cayman Islands, the United Kingdom, the United States and elsewhere shut down the worldwide operations of the BCCI Group. Shortly thereafter, the District Court in Luxembourg, where BCCI Holdings and BCCI SA were incorporated, the Grand Court of the Cayman Islands,

where BCCI Overseas and ICIC Overseas were incorporated, and the High Court of Justice in England, where BCCI SA had its major banking operations, appointed fiduciaries to oversee the global liquidations of BCCI. Since their appointments, the Court Appointed Fiduciaries have been working together to preserve and collect all of the assets of the BCCI Group worldwide, in order to distribute those assets ratably to innocent creditors and depositors of the BCCI Group around the world.

B. The Plea Agreement

As part of their efforts to preserve and collect the BCCI Group's assets for the benefit of creditors and depositors, in December 1991, the Court Appointed Fiduciaries negotiated a comprehensive Plea Agreement with the Department of Justice, the District Attorney of New York County, the Federal Reserve and numerous other state and federal agencies. Amicus Appendix (hereinafter "Am. App.") at 1a-29a. Through the Plea Agreement, which was approved by the United States District Court for the District of Columbia, the Department of Justice and other governmental entities recognized the Court Appointed Fiduciaries as the sole, authorized representatives of the creditors and depositors of the BCCI Group.

The Plea Agreement required the BCCI corporations, through the Court Appointed Fiduciaries, to plead guilty to federal and state criminal charges and to agree not to contest charges filed by the Federal Reserve. Am. App. at 6a-8a, 19a. It further provided that the United States District Court for the District of Columbia would enter an order pursuant to 18 U.S.C. § 1963(a) forfeiting all of the BCCI Group's assets located in the United States. The United States Department of Justice agreed that, following completion of claims proceedings pursuant to 18 U.S.C. § 1963(*l*), one-half of the forfeited assets would be transferred to the Worldwide Victims and Creditors Compensation Fund (hereinafter "the Worldwide

Victims Fund") to be administered by the Court Appointed Fiduciaries. The remaining half would be used at the discretion of the Attorney General for various enumerated purposes, including "restitution to victims of BCCI, which may include remission to the Court Appointed Fiduciaries . . . for the purpose of facilitating an increase in assets available for distribution by the Court Appointed Fiduciaries to innocent worldwide victims of BCCI." Am. App. at 13a.

C. The Sale Of First American

Among the charges to which the BCCI Group agreed to plead guilty was the illegal, indirect ownership of First American Bankshares, Inc. (hereinafter "FAB"), a Washington D.C.-based bank holding company and one of the respondents herein.[1] As part of the Plea Agreement, the Court Appointed Fiduciaries agreed to comply with existing divestiture orders and to cause the BCCI Group to divest itself of any interest it had in First American. Am. App. at 19a.

On January 24, 1992, the United States District Court for the District of Columbia "condemned and forfeited to the United States" property of the BCCI Group in the United States, including, "the net proceeds from the future sale or other disposition or transfer of any stock, security or other interest in First American Bankshares, Inc., but not the stock, security or other interest itself." Am. App. at 31a. On June 23, 1992, the court appointed a Trustee to hold the stock of FAB's corporate parent, First American Corporation (hereinafter "FAC"), and to "sell or otherwise dispose of [the FAC] shares or cause the boards of directors of FAC and FAB to sell

---

[1] First American Bankshares, with its parent corporations First American Corporation, Credit and Commerce American Investments, B.V., and Credit and Commerce American Holdings, N.V., will be referred to herein collectively as "First American." FAB's corporate parent, First American Corporation ("FAC"), is also a respondent in this action.

or otherwise dispose of all assets owned or controlled directly or indirectly by FAC." Am. App. at 42a. The Trustee and the FAC Board of Directors subsequently sold the assets of FAB for approximately $460 million. Am. App. 50a.

Of the total value of First American, approximately 61% is attributable to the BCCI Group's ownership and is forfeitable pursuant to the Plea Agreement. Am. App. at 66a. In addition, the Court Appointed Fiduciaries are entitled to distribution of approximately 37% of First American's value pursuant to an assignment of share proceeds by the Government and Ruler of Abu Dhabi, United Arab Emirates, and certain additional assignments.

ARGUMENT

I. THE NINTH CIRCUIT WAS CORRECT WHEN IT HELD THAT THE LITIGATION OF PETITIONERS' CLAIMS IS INTERFERING WITH THE ORDERLY, EQUITABLE LIQUIDATION OF THE BCCI GROUP

The Ninth Circuit held that to permit petitioners' litigation, in light of the existing liquidation proceedings, would lead to "double counting of damages and would interfere with an equitable liquidations process." Petitioners' Appendix (hereinafter "Pet. App.") at A-20. That court stated further:

> The appellants in this case have claims similar to those of many other potential claimants. Their claims, if allowed in this lawsuit, would enable them to jump ahead of other creditors in priority and obtain greater shares of the failed bank's assets and of the assets of any wrongdoers who may owe money to the failed bank on account of their wrongs.

Id. As set forth below, the Ninth Circuit correctly found that the instant action impedes the global liquidation of the BCCI Group; accordingly, it was properly dismissed.

A. This Litigation Is Delaying Payment To Thousands Of BCCI Creditors Worldwide

On June 6, 1994, the First American Trustee notified the District Court for the District of Columbia of completion of the sale of First American assets. Am. App. at 47a-48a. On December 21, 1994, that court entered a procedural order setting forth procedures for completion of the liquidation of assets and resolution of claims against First American, so the proceeds of the First American sale could be distributed according to the Plea Agreement and other applicable agreements. Am. App. at 49a-64a.

Pursuant to the procedural order, the Boards of Directors of FAB and FAC have set reserves against asserted claims, including petitioners' claims. Am. App. at 55a-58a. Because petitioners' purported claims exceed the total value of First American's assets, the need to maintain a reserve with respect to petitioners' claims precludes the payment of any First American proceeds to the forfeiture fund or the Worldwide Victims Fund. Am. App. at 57a. Consequently, petitioners' obstinacy in pressing their claims is interfering with the liquidation proceedings at their most basic level—the claims are blocking hundreds of millions of dollars from remission to the Worldwide Victims Fund, which funds could then be distributed to depositors and creditors participating in the liquidation proceedings, including some of the petitioners before this Court.

B. The Liquidators Have Brought Actions Against And/Or Have Entered Settlements With The Same Defendants For The Same Losses

Contrary to the arguments made by petitioners, the district court below held expressly that the BCCI Group was the victim of wrongdoers' conduct in this instance. Pet. App. at A-44. The injuries asserted by petitioners are identical to the injuries of every other depositor and credi-

tor of the BCCI Group: they were induced to provide credit to a banking corporation which was being victimized by wrongdoers and fraudsters, and their money has been squandered.[2] As the courts below properly held, claims common to all creditors belong to the corporation generally, and in this case to the Court Appointed Fiduciaries. *In re Sunrise Sec. Litig.*, 916 F.2d 874, 886-89 (3d Cir. 1990); *Downriver Com. Fed. Credit Union v. Penn Square Bank*, 879 F.2d 754, 764 (10th Cir. 1989), *cert. denied*, 493 U.S. 1070 (1990). *Cf. Davis v. Elmira Sav. Bank*, 161 U.S. 275, 289-90 (1896); *United States ex rel. White v. Knox*, 111 U.S. 784, 786 (1884) (federal banking statutes and policy favor ratable distribution to all depositors). To hold otherwise would create a race to the courthouse by certain well-funded depositors, who could recover from wrongdoers at the expense of the liquidation estate and/or other less sophisticated victims.

In this instance, the District Court and the Ninth Circuit correctly held that the Court Appointed Fiduciaries are the appropriate persons to bring suit on behalf of the BCCI Group and their innocent creditors and depositors. Pet. App. at A-20 thorugh A-21; A-43 through A-44. To the extent they have evidence of wrongdoing, and consistent with overall liquidation strategy, the Court Appointed Fiduciaries have brought civil actions for damages against many of the same parties sued by petitioners here.

For example, beginning in 1992, the Court Appointed Fiduciaries have brought a series of actions in England against the BCCI Group's auditors, respondents Price Waterhouse and Ernst & Whinney, for negligence and breach of contract in relation to their audits of the BCCI Group. *Bank of Credit and Commerce International*

[2] In filing their complaint as a purported class action on behalf of themselves and "all others similarly situated," petitioners concede that their injuries are identical to those of all other depositors.

(Overseas) Limited [*In Liquidation*] *and Ors v. Price Waterhouse and Ors*, CH1992 B No. 2754, CH1992 B No. 2590, CH1992 B No. 2591, CH1993 B No. 1509, CH1993 B No. 1512 (consolidated actions concerning audits 1985-1987); *Bank of Credit and Commerce International (Overseas) Limited* [*In Liquidation*] *and Ors v. Price Waterhouse and Ors*, CH1994 B No. 1888 (concerning the 1988 audits); *Bank of Credit and Commerce International (Overseas) Limited* [*In Liquidation*] *and Ors v. Price Waterhouse and Ors*, CH1995 B No. 2351 (concerning the 1989 audits). These actions remain pending, and the parties are currently engaged in active discovery.

Similarly, the Court Appointed Fiduciaries have sued Ghaith Pharaon, the ultimate owner of respondents GRP Investments, Interredec, Inc., and Interredec Southern Co., for fraud, breach of contract, RICO violations and other wrongdoing. *BCCI Holdings (Luxembourg) S.A. v. Pharaon*, Civil Action No. 94-3058 (SHS) (S.D.N.Y.). That suit is pending and is in active discovery. The Court Appointed Fiduciaries have also filed and are pursuing an action alleging negligence, breach of fiduciary duty, RICO violations and other wrongdoing by respondents Clark Clifford, Robert Altman and the partners of Clifford and Warnke. *BCCI Holdings (Luxembourg) S.A. v. Clifford*, Civil Action No. 94-1461 (JHG) (D.D.C.).

Finally, the Court Appointed Fiduciaries have reached a settlement with the Government of Abu Dhabi, United Arab Emirates (a respondent here), and its Ruling Family. This settlement has been approved by the High Court of Justice in England, the Grand Court of the Cayman Islands, and the District Court in Luxembourg; it is currently pending before the Luxembourg Court d'Appel. If approved, the settlement agreed by the Court Appointed Fiduciaries and representatives of the government of Abu Dhabi and the Abu Dhabi Ruling Family will inject $1.8 billion into the pool of funds to be distributed to worldwide creditors and depositors.

By bringing these actions, and in appropriate cases by negotiating settlements, the Court Appointed Fiduciaries seek to recover on behalf of *all* creditors and depositors for the same injuries that petitioners claim. Petitioners' attempt to gain an advantage over other creditors through this proceeding is evident in their petition. Petitioners' attempt to justify their litigation by stating that unless their claims are permitted to go forward, their only remedy will be "whatever pittance they receive from some insolvency proceeding conducted in a foreign land . . . ." Pet. at 17. This justification was expressly rejected by the Third Circuit in an analogous case. The Third Circuit reasoned:

> permitting plaintiffs to sue directly for claims emanating from injury to the institutions would circumvent the priority scheme by enabling depositors to recover the institutions' assets in advance of other general creditors and claimants with superior interests, such as secured creditors. This result . . . is both inequitable and inefficient, and threatens to further complicate the immense task of liquidating the institutions' assets.

In re Sunrise Sec. Litig., 916 F.2d 874, 889 (3d Cir. 1990).

II. INTERNATIONAL COMITY SUPPORTS DISMISSAL OF THIS ACTION

The Court Appointed Fiduciaries submit that considerations of comity further support dismissal of petitioners' claims, because they interfere with the orderly, equitable liquidation of the BCCI Group. This Court has defined comity as:

> the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws.

Hilton v. Guyot, 159 U.S. 113, 164 (1895).

The Court Appointed Fiduciaries are the duly appointed representatives of foreign liquidation estates. They operate under court supervision and are managing coordinated, transnational liquidation proceedings for the purpose of assuring an orderly, equitable process in which all creditors and depositors will share, *pari passu*, in the assets of the BCCI Group. Petitioners purport to be a class of all BCCI Group depositors and creditors, though no class was ever certified. Petitioners therefore purport to represent the same depositors and creditors as the Court Appointed Fiduciaries, mounting a direct challenge to the Court Appointed Fiduciaries' authority to act on behalf of all creditors and depositors in the interest of the common good.

This Court and other United States courts have traditionally accorded comity to international liquidation proceedings. *Canada Southern Ry. Co. v. Gebhard*, 109 U.S. 527, 537-39 (1883); *Victrix S.S. Co., S.A. v. Salen Dry Cargo, A.B.*, 825 F.2d 709, 713-15 (2d Cir. 1987) (ordered discovery regarding whether to give comity); *Cunard S.S. Co. v. Salen Reefer Servs., A.B.*, 773 F.2d 452, 458 (2d Cir. 1985); *In re Colorado Corp. (IIT v. Lam)*, 531 F.2d 463, 468-69 (10th Cir. 1976); *Pravin Banker Assocs., Ltd. v. Banco Popular del Peru*, 165 B.R. 379 (S.D.N.Y. 1994); *Lindner Fund, Inc. v. Polly Peck Int'l PLC*, 143 B.R. 807, 810 (S.D.N.Y. 1992); *Allstate Life Ins. Co. v. Lintner Group, Ltd.*, [1992 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 968,64 at 93,518-20, 1992 WL 136849 at *6-8 (S.D.N.Y. June 1, 1992), *aff'd*, 994 F.2d 996 (2d Cir.), *cert. denied*, 114 S. Ct. 386 (1993).

In *Canada Southern*, this Court's seminal case on according comity to a foreign bankruptcy proceeding, this Court held that New York bondholders of a Canadian railway could not press an action against the railway in the United States, because the action would conflict with the railway's plan of reorganization in Canada. The Court noted that it is reasonable in the insolvency context

to require "each individual to so conduct himself for the general good as not unnecessarily to injury another," 109 U.S. at 536. Citing the need for comity in international insolvency proceedings, the Court dismissed the actions brought by the New York bondholders. *Id.* at 539-40.

Comity is the rule and not the exception. Comity toward foreign proceedings should be granted unless "contrary or prejudicial to the interest of the nation called upon to give it effect." *Somportex Ltd. v. Philadelphia Chewing Gum Corp.*, 453 F.2d 435, 440 (3d Cir. 1971), *cert. denied*, 405 U.S. 1017 (1972). The granting of comity to the BCCI Group liquidation proceedings, through denial of certiorari here, would not be contrary to the interests or public policy of the United States. The public policy of this country clearly favors the consolidated consideration of claims in the insolvency context. *See Cunard S.S. Co. v. Salen Reefer Servs., A.B.*, 773 F.2d 452, 459 (2d Cir. 1985); *IIT v. Cornfeld*, 462 F. Supp. 209, 217 (S.D.N.Y. 1978), *aff'd in relevant part*, 619 F.2d 909 (2d Cir. 1980); *Allstate Life Ins. Co. v. Lintner Group, Ltd.*, [1992 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 968,64 at 93,520, 1992 WL 136849 at *9.

In this case, through the mechanism of a class action, petitioners seek to supplant the decision-making of the Court Appointed Fiduciaries with their own. If viewed as a class action, petitioners' litigation is an attempt to usurp the authority of the Court Appointed Fiduciaries and to establish a U.S.-based, mini-liquidation supervised by petitioners' counsel and U.S. courts. As such, it is in direct conflict with the global liquidation proceedings being administered by the Court Appointed Fiduciaries. If not viewed as a class action, petitioners' litigation in the United States is an attempt by a small group of depositors to recover for themselves funds which more appropriately belong to the corporate estate for the benefit of all creditors and depositors. *See In re Sunrise Sec. Litig.*, 916 F.2d 874, 889. Under either view, petitioners' efforts are a substantial interference with the BCCI Group's orderly, equi-

table liquidation proceedings; comity requires deference to the global liquidation proceedings, and deference requires that petitioners' challenge to the liquidation proceedings be rejected by this Court.

III. IT IS NOT INCONVENIENT FOR THE PETITIONERS TO PARTICIPATE IN THE LIQUIDATION PROCEEDINGS ABROAD

Petitioners' argument that they should be permitted to litigate their claims in the United States because they cannot participate conveniently in the liquidation proceedings abroad is without basis and should be rejected by this Court. Of the fourteen petitioners before this Court, only three—Soha Inc., Idriss Devco, Inc., and S&L Gentrade, Inc.—had deposits in the United States. All other petitioners made their deposits in BCCI branches and/or subsidiaries in England, Hong Kong, Luxembourg, Abu Dhabi, Grand Cayman, and France. Having found it convenient to make their *deposits* abroad, petitioners should not be heard to argue that it would be inconvenient for them to make their *claims* abroad.[8]

Insofar as petitioners had deposits in the United States, there were U.S. liquidation proceedings in which they could recover their funds. Following the regulatory seizure of the BCCI Group, BCCI SA's New York Agency and Los Angeles Agency were both placed under the control of state banking authorities. State authorities in New York and California administered a comprehensive claim proceeding for depositors of the U.S. Agencies. Pet. App. at A-51 n.37; Am. App. at 3a, 10a. The accepted claims of depositors of BCCI SA's U.S. agencies were paid *in full* by the state banking authorities. See Pet. App. at A-51 n.37; Pet. App. at A-57 through A-58 & n.43.

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[8] Moreover, the filing of a claim in the liquidation proceedings is not difficult. Claim forms are available upon request from the Court Appointed Fiduciaries. Claim forms are printed in English, may be completed in English and may be submitted by mail to the appropriate liquidation jurisdiction.

Soha, Inc., S&L Gentrade Inc., and Idriss Devco, Inc., the three petitioners who claim deposits in the United States, did not inform this Court in the Petition that they have *already* participated in a local liquidation proceeding in California. Each of these petitioners filed claims in the liquidation of the Los Angeles Agency of BCCI SA, and each claim was rejected because the petitioner's deposit was set-off by the California state liquidator against an existing liability. Because those existing liabilities have been reduced by the amount each petitioner had on deposit, these petitioners have already received full credit for their purported deposits.

CONCLUSION

For the above-stated reasons, the Court Appointed Fiduciaries respectfully request that this Court deny the petition for writ of certiorari.

Respectfully submitted,

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Dated: December 1, 1995

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APPENDICES

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Crim No. 91-0655

UNITED STATES OF AMERICA

-v-

BCCI HOLDINGS (LUXEMBOURG), S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) LIMITED, INTERNATIONAL CREDIT AND INVESTMENT COMPANY (OVERSEAS) LIMITED,

Defendants.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
CRIMINAL TERM

Ind 8090/91

PEOPLE OF THE STATE OF NEW YORK

-v-

BCCI HOLDINGS (LUXEMBOURG), S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) LIMITED, INTERNATIONAL CREDIT AND INVESTMENT COMPANY (OVERSEAS) LIMITED, *et al.*,

Defendants.

PLEA AGREEMENT

Parties and Purpose

WHEREAS, the United States of America, by its attorneys for the United States Department of Justice (the "DOJ"), the People of the State of New York, by the District Attorney for New York County, Robert M. Morgenthau (the "DANY") and Brian Smouha, Jacques Delvaux and Constant Franssens, as Commissairies of BCCI Holdings (Luxembourg) S.A. ("BCCI Holdings"); Brian Smouha, as Commissaire of Bank of Credit and Commerce International, S.A. ("BCCI SA"); Ian Wight and Robert Axford, as Joint Provisional Liquidators of Bank of Credit and Commerce International (Overseas) Ltd. ("BCCI Overseas"); and Ian Wight and Robert Axford as Joint Provisional Liquidators for International Credit and Investment Company (Overseas) Limited ("ICIC") (all such persons acting in the capacities so indicated or their duly appointed successors, being hereinafter collectively referred to herein as the "Court Appointed Fiduciaries"), have engaged in discussions with respect to the subject matter hereof pursuant to Rule 11 of the United States Federal Rules of Criminal Procedure, and, with respect to DANY, under New York law;

WHEREAS, the DOJ and the DANY have pursued investigations into the business and affairs of BCCI Holdings, BCCI SA, BCCI Overseas and ICIC (collectively, "BCCI"), which investigations have developed, for the benefit of law enforcement and regulatory agencies, significant evidence of criminal activity by the prior management of BCCI and both the DOJ and the DANY continue to pursue investigations into the impact of that activity;

WHEREAS, prior to July 5, 1991, BCCI had been a worldwide banking organization with operations in approximately 69 countries and on July 5, 1991 BCCI was closed by bank regulatory authorities in the United King-

dom, the United States, the Cayman Islands, Luxembourg and elsewhere;

WHEREAS, BCCI is presently insolvent, and is subject to insolvency or liquidation proceedings pursuant to the laws of Luxembourg and the Cayman Islands and, in the case of certain agencies and branches of BCCI SA, are awaiting liquidation or in the process of being liquidated in the States of California and New York, and elsewhere;

WHEREAS, the failure of BCCI is likely to cause thousands of innocent depositors and other creditors throughout the world to suffer losses in the aggregate in billions of dollars;

WHEREAS, in order to address the foregoing, the Court Appointed Fiduciaries have been appointed to act as joint provisional liquidators and/or commissaires by courts in the respective domiciles of the BCCI companies to collect all BCCI assets located throughout the world, and liquidate the same for the purpose of achieving the greatest possible distribution to all lawful creditors and depositors of BCCI on a worldwide basis;

WHEREAS, in furtherance of the Court Appointed Fiduciaries' efforts, the Court Appointed Fiduciaries have filed a petition in Bankruptcy Court in the Southern District of New York under Title 11, Section 304 of the Bankruptcy Code seeking the turnover of all BCCI assets in the United States to the Court Appointed Fiduciaries (the "Section 304 Proceeding") and a Temporary Restraining Order has been issued in connection therewith;

WHEREAS, former management and operators of BCCI fraudulently and secretly acquired (1) direct or indirect ownership and control over the shares of First American Bankshares Inc., Washington, D.C. ("First American"), the former National Bank of Georgia, Atlanta, Georgia, and Independence Bank, Encino, Cali-

fornia ("Independence Bank"), and (2) an interest in the former CenTrust Savings Bank, Miami, Florida ("CenTrust");

WHEREAS, the DOJ and federal banking regulators intend to minimize the risk of potential loss to the Bank Insurance Fund and United States taxpayers by obtaining a fund which could provide additional capital to depository institutions and safeguard the Bank Insurance Fund, if either are necessary, in connection with BCCI's secret investment in U.S. financial institutions;

WHEREAS, it appears that the identifiable assets of BCCI in the United States, exclusive of any stock ownership in First American and Independence Bank, constitute approximately $550,000,000 in cash and other assets;

WHEREAS, the prior management and operators of BCCI are no longer involved in any effective decision-making capacity with BCCI, and its worldwide affairs are subject to the control of the Court Appointed Fiduciaries whom the DOJ, the DANY and the other parties hereto recognize, based upon various court appointments, as having full right and authority to act on behalf of BCCI and whom the DOJ and the DANY are willing to support in their efforts to collect and appropriately liquidate and distribute the assets of BCCI in an orderly and fair manner, consistent with the protection of innocent victims of BCCI and the due administration of justice;

WHEREAS, responsible authorities in the United States, the United Kingdom, the Cayman Islands and Luxembourg desire that the assets of BCCI be distributed by the Court Appointed Fiduciaries only in a manner which (a) protects United States taxpayers from potential losses to the banking organizations illegally acquired by BCCI, (b) provides prompt recovery to innocent depositors, creditors and other victims of BCCI, and (c) ensures, as set forth herein, that no monies are paid

to persons who have violated laws forbidding narcotics trafficking, terrorism, money laundering, crimes of violence or other acts generally recognized as felonies or similar crimes under the laws of the United States and other countries subscribing to recognized norms of international justice;

WHEREAS, pleas of guilty entered by the Court Appointed Fiduciaries, on behalf of BCCI, to substantial criminal charges in the United States will address significant U.S. law enforcement interests that the parties hereto believe, once the pleas provided for herein are entered and accepted by the relevant courts and all of the provisions of this Agreement are implemented as provided herein, will resolve all criminal investigations, charges, indictments and all criminal and civil proceedings against BCCI concerning matters occurring before July 5, 1991 subject to the terms and conditions set forth herein, thereby removing a major impediment and in fact facilitating the distribution of substantial BCCI assets to innocent depositors, creditors and other victims of BCCI;

WHEREAS, in addition to the DOJ and the DANY, responsible international law enforcement and regulatory authorities in the United Kingdom, the Cayman Islands and Luxembourg also desire a resolution which balances interests in obtaining an appropriate penalty for illegal corporate conduct and compensation of innocent depositors, creditors and other victims of BCCI;

WHEREAS, the entry of pleas of guilty by the Court Appointed Fiduciaries, on behalf of BCCI, to criminal charges in the United States District Court for the District of Columbia (the "U.S. District Court") and the Supreme Court of the State of New York (the "N.Y. Supreme Court") as provided herein is not intended by the parties hereto to preclude the criminal prosecution of or any civil action against any culpable BCCI officers, employees, agents or other entities (other than BCCI) or wrongdoers;

WHEREAS, the parties believe that the entry of pleas of guilty by the Court Appointed Fiduciaries, on behalf of BCCI, to criminal charges as provided herein will materially assist in the prosecution of culpable persons and entities (other than BCCI) by permitting DOJ, DANY, and other enforcement authorities to obtain greater access to documents and witnesses through the full cooperation and assistance of the Court Appointed Fiduciaries.

NOW, THEREFORE, the United States of America through the DOJ, the DANY, the Board of Governors of the Federal Reserve System (the "Board of Governors"), the Federal Deposit Insurance Corporation ("FDIC"), the Resolution Trust Corporation (the "RTC"), the Office of Thrift Supervision (the "OTS"), the Office of the Comptroller of the Currency (the "OCC"), the Securities and Exchange Commission ("SEC") the Superintendent of Banks of the State of New York ("N.Y. Banking"), the Superintendent of Banks of the State of California ("California Banking") and the Court Appointed Fiduciaries, with the assistance and support of the Serious Fraud Office of the United Kingdom (the "Serious Fraud Office"), the Public Prosecutor for Luxembourg, and the Attorney General of the Cayman Islands hereby covenant and agree as follows:

THE PLEAS

The Federal Plea

1. The Court Appointed Fiduciaries, acting on behalf of BCCI, will cause BCCI to waive venue and plead guilty in the U.S. District Court to the information, attached hereto as Exhibit A-1 (the "U.S. Information"), which charges BCCI with conspiracy to conduct the affairs of an enterprise through a pattern of racketeering activity in violation of 18 U.S.C. Sections 1962(c) and (d).

2. The Court Appointed Fiduciaries fully understand the nature and elements of the crimes with which BCCI has been charged in the U.S. Information.

3. The Court Appointed Fiduciaries will cause BCCI to plead guilty because, to the best of their knowledge, they have determined after due inquiry that acts of prior management of BCCI establish that BCCI, as the entity responsible for the acts of such management, is in fact guilty of the charges contained in the U.S. Information and, in causing BCCI to plead guilty to the U.S. Information, the Court Appointed Fiduciaries, on behalf of BCCI, will accept the factual statements set forth in the U.S. Information and the conclusion of the DOJ that these statements provide a legally sufficient factual basis for the plea contemplated in paragraph 1 above.

The New York County Plea

4. The Court Appointed Fiduciaries, acting on behalf of BCCI, will cause BCCI to plead guilty in the N.Y. Supreme Court to counts one through six of New York County Indictment Number 8090/91 ("N.Y. Indictment") (Attached hereto as Exhibit A-2), it being expressly understood that the DANY will move to withdraw, as to BCCI only, at the time of the plea of guilty the second full paragraph of page 5 of said indictment, and the Court Appointed Fiduciaries will consent to that motion.

5. The Court Appointed Fiduciaries fully understand the nature and elements of the crimes with which BCCI has been charged in the N.Y. Indictment.

6. The Court Appointed Fiduciaries will cause BCCI to plead guilty because, to the best of their knowledge, they have determined after due inquiry that acts of prior management of BCCI establish that BCCI, as the entity responsible for the acts of such management, is in fact guilty of the crimes charged in counts one through six of the N.Y. Indictment as amended pursuant to paragraph 4 and, in causing BCCI to plead guilty to those crimes,

the Court Appointed Fiduciaries, on behalf of BCCI, accept that the factual statements set forth in counts one through six of the N.Y. Indictment provide a legally sufficient factual basis for the plea contemplated in paragraph 4 above.

7. The Court Appointed Fiduciaries, on behalf of BCCI, will join with the DANY's recommendation that, a fine of $10,000,000 under the New York Penal Law section 80.15 be imposed, jointly and severally, on the corporate entities defined above as BCCI, payable as provided in paragraph 12 below.

FORFEITURE AND DISGORGEMENT

8.(a) Upon execution of this Agreement by the parties, the Court Appointed Fiduciaries will cause $5,000,000 to be paid as an interim capitalization payment to Independence Bank (the "Interim Capitalization Payment") in exchange for newly issued shares of Independence Bank, which shares shall represent all the outstanding shares of Independence Bank. The shares to be issued pursuant to the Interim Capitalization Payment shall be issued in the name of one or more of the entities constituting BCCI herein and shall be subject to the divestiture Order of the Board of Governors of May 6, 1991 and placed in a trust to manage, control and sell Independence Bank, with an independent trustee to be selected by the Court Appointed Fiduciaries, which trust and trustee will be subject to the approval of the Board of Governors, California Banking, DOJ, and DANY, and subject to paragraph 9(b).

(b) Upon the filing of the U.S. Information, pursuant to 18 U.S.C. Section 1963(d)(1), the DOJ, on behalf of the United States, shall apply to the U.S. District Court with the consent of the Court Appointed Fiduciaries for an order directing that certain BCCI assets located in the United States, more fully described in Exhibit B, be paid

into a custodial account maintained by the Treasury Department in a segregated account within the Department of Justice Seized Asset Deposit Fund in the name of the U.S. District Court (the "Custodial Account"). As proceeds from paragraphs 9(b) through (e) becomes available, the DOJ, on behalf of the United States, shall apply to the U.S. District Court with the consent of the Court Appointed Fiduciaries for appropriate orders effectuating the transfer of proceeds to the Custodial Account for disbursement. During the term of this Agreement, funds in the Custodial Account shall draw interest, which interest will accrue to the Custodial Account. Upon entry of the Forfeiture Order as provided herein, the Custodial Account will be transferred from the Seized Asset Deposit Fund to the Department of Justice Assets Forfeiture Fund. Notice of any payments and transfers relating to the Custodial Account shall be made to the parties by the Treasury Department.

9. Upon entry of a judgment of conviction on the U.S. Information and an order of forfeiture issued pursuant to 18 U.S.C. Sections 1963(a)(1), (2) and (3) (the "Forfeiture Order"), BCCI shall forfeit to the United States the following property of BCCI located in the United States:

(a) all of BCCI's ownership interest in deposits and other assets originally held in those banks and brokerage firms identified on Exhibit B hereto and then paid into the Custodial Account under paragraph 8(b),

(b) the net proceeds from the sale or other disposition or transfer of any stock, security or other interest in Independence Bank, but not the stock, security or other interest itself,

(c) the net proceeds from the sale or other disposition or transfer of any stock, security or other

interest in First American, but not the stock, security or other interest itself,

(d) the balance of the liquidation estates of the Los Angeles and New York agencies of BCCI SA, but not the estates themselves, upon completion of liquidation proceedings conducted by the New York Banking and the California Banking in accordance with the laws of California and New York. For purposes of the foregoing, the "liquidation estates" shall consist of all of the rights and interests of the Superintendent of Banks of the states of New York and California under their respective state law banking statutes, with respect to the assets of BCCI SA located in their respective states and the assets of the New York and California agencies of BCCI SA. The liquidation estates do not include the assets enumerated in Exhibit B, and

(e) the entirety of BCCI's interests in all other property, not identified in clauses 9(a) through (d), located in the United States, including, without limitation, real property and all tangible and intangible personal property.

10. In furtherance of the ongoing liquidation activities of the New York Banking and the California Banking, the New York Banking and the California Banking will attempt to complete their respective liquidations as soon as practicable consistent with their respective statutes and the determinations of their respective courts. Thereafter, they will transfer to the Custodial Account the United States' forfeiture interest in the entire remainder of the liquidation estates, as quickly as reasonably possible.

11. As promptly as practicable after the entry of the Forfeiture Order and, to the extent possible, pending the completion of any proceedings that may be required under 18 U.S.C. Section 1963(*l*), disbursements shall be made from the Custodial Account to a U.S. Disgorge-

ment, Compensation and Penalty Fund maintained by the Treasury Department within the Department of Justice Assets Forfeiture Fund (the "U.S. Fund") and, subject to paragraphs 13, 14, and 17 below, to a Worldwide Victims and Creditors Compensation Fund maintained by the Court Appointed Fiduciaries (the "Worldwide Victims Fund") as follows:

(a) subject to clause (d) below, the first $100,000,000 deposited in the Custodial Account shall be disbursed to the U.S. Fund for the purposes set forth in paragraph 12;

(b) the next $100,000,000 deposited in the Custodial Account shall be disbursed to the Worldwide Victims Fund;

(c) subsequent deposits to the Custodial Account shall be concurrently disbursed in equal amounts to the U.S. Fund and the Worldwide Victims Fund, except that monies due to the U.S. Fund shall be paid without regard to delays, if any, under paragraph 13(a);

(d) prior to the disbursements described in clauses (a) through (c) of this paragraph 11, the Interim Capitalization Payment described in paragraph 8(a) shall be refunded to the Court Appointed Fiduciaries.

12. As determined in the sole discretion of the Attorney General of the United States (the "Attorney General"), the U.S. Fund shall be used for the following purposes:

(a) to minimize the risk of potential loss to the Bank Insurance Fund of the FDIC and United States taxpayers by providing additional capital, upon the request of the FDIC, OCC and the Board of Governors, to the subsidiary banks of First American, and Independence Bank, or to reimburse the Bank Insurance Fund for any losses it incurs in connection

with the sale or disposition of these institutions; *provided, however,* that when all said institutions are sold or otherwise disposed of an amount equal to any such capital infusion or insurance fund payment shall first be repaid to the U.S. Fund, with the balance of the net proceeds of the sale or disposition paid in equal amounts through the Custodial Account to the U.S. Fund and the Worldwide Victims Fund;

(b) within one week of the entry of the Order of Forfeiture, the Court Appointed Fiduciaries shall apply for remission, and the Attorney General will remit as soon as available $10,000,000 out of funds deposited in the U.S. Fund pursuant to paragraph 11(c) above for the sole purpose of paying the fine imposed or to be imposed upon BCCI in the N.Y. Supreme Court pursuant to paragraph 7 of this Agreement; it being understood and agreed that the distribution set forth under this paragraph shall take precedence over all other distributions from the U.S. Fund, obtained under paragraph 11(c), unless there is written consent otherwise of both the Attorney General and the DANY;

(c) to satisfy a punitive forfeiture in an amount to be determined in the sole and absolute discretion of the Attorney General;

(d) to compensate the DOJ for the reasonable costs of investigation and prosecution of BCCI and any former employees, officers or agents of BCCI, or other individuals who assisted its criminal activities;

(e) to compensate the DANY for the reasonable costs of its investigation and prosecution of BCCI and continued investigation of the activities of former employees, officers or agents of BCCI, should DANY make an application for equitable sharing;

(f) for restitution to victims of BCCI, which may include remission to the Court Appointed Fiduciaries in accordance with 18 U.S.C. Section 1963(g) for the purpose of facilitating an increase in assets available for distribution by the Court Appointed Fiduciaries to innocent worldwide victims of BCCI, and which may include claims related to the failure of CenTrust, if any;

(g) to reimburse the Board of Governors, FDIC, RTC, OTS, OCC, SEC for the reasonable costs of their investigations of, and civil and administrative proceedings against BCCI and related persons and entities;

(h) to take other appropriate measures as authorized pursuant to 18 U.S.C. Sections 1963(f) and (g).

The DOJ will notify DANY of disbursements from the U.S. Fund.

13. Disbursements to the Worldwide Victims Fund are conditioned on availability of funds under paragraph 11, establishment of a screening mechanism under paragraph 14, and, as provided in clause (a) below, the cooperation requirements of paragraphs 17 and clauses 21(c) and (e). The amounts payable to the Worldwide Victims Fund shall be paid every 15 days beginning as soon as practicable after entry of the Forfeiture Order in increments of $50,000,000 (or such lesser amounts as are available) until all funds are paid unless:

(a) DOJ or DANY have filed written notice with the Court Appointed Fiduciaries specifying the details of a violation of or a failure to comply with paragraph 17, or in the case of an alleged violation of or failure to comply with clauses (c) and (e) of paragraph 21, upon similar written notice filed by the DOJ with the Court Appointed Fiduciaries, in which case payments will be deferred until the par-

ties resolve any dispute over such cooperation. Any dispute not resolved by the parties within 10 days of such notification may be referred by any party to the District Court for resolution. Upon resolution of any objection under this section, transfers will resume promptly as provided above.

(b) During the pendency of any delay by virtue of objections under clause (a) above, interest which accrues on these funds held in the Custodial Account shall accrue to the benefit of the Worldwide Victims Fund and shall be payable at the same time as and together with the principal to which it relates.

14. Prior to the transfer of funds to the Worldwide Victims Fund pursuant to paragraph 13, the Court Appointed Fiduciaries shall have established an international screening mechanism acceptable to the DOJ and DANY that assures, consistent with the laws of the countries governing the distribution of the Worldwide Victims Fund by the Court Appointed Fiduciaries, that such funds will be distributed only to innocent depositors, creditors and other victims of BCCI whose claims are not derived directly or indirectly through violations of United States or other laws concerning narcotics, terrorism, money laundering, crimes of violence, or other acts generally recognized as felonies or similar crimes under the laws of countries subscribing to recognized norms of international justice. The screening mechanism shall, where appropriate, incorporate participation of the Bank of England, the Serious Fraud Office, the Public Prosecutor of Luxembourg, and the Attorney General of the Cayman Islands and the assistance of the United States Federal Bureau of Investigation and the DANY.

15. In the unlikely event that funds in the Worldwide Victims Fund and funds otherwise available to the Court Appointed Fiduciaries exceed the amount required for full compensation of the innocent depositors, creditors

and other victims of BCCI described in paragraphs 14 above, the excess funds will be returned to the United States for deposit into the U.S. Fund and distribution as contemplated in paragraph 12 above.

MISCELLANEOUS PROVISIONS

16. The parties hereto agree to assist each other in effectuating the Forfeiture Order and taking whatever action may be reasonably necessary to protect the interests of the parties hereto in the property, ordered forfeited, including, without limitation, identifying and collecting BCCI assets and causing the transfer thereof to the Custodial Account, promptly addressing claims and objections to the Forfeiture Order filed by third parties pursuant to 18 U.S.C. Sections 1963(g) and/or 1963(1) and, subject to the terms of this Agreement, transferring funds to the U.S. Fund and the Worldwide Victims Fund as provided herein.

17.(a) The Court Appointed Fiduciaries agree to cooperate fully with the DOJ and the DANY in their ongoing investigations and related proceedings concerning BCCI and BCCI related activities, individuals and entities, to the fullest extent allowed under applicable United States and foreign law.

(b) As used in this paragraph:

(i) "investigative information" includes documents, records, tangible evidence or other information concerning BCCI and related activities, individuals and entities requested by DOJ or DANY.

(ii) "production" of investigative information means to obtain access to, provide originals of where practicable, make and provide copies of, and permit use of such information, as specified by the requesting party

(c) In the event that the Court Appointed Fiduciaries conclude that production of investigative information violates a relevant and applicable foreign law, the Court Appointed Fiduciaries will promptly:

(i) notify the requesting party detailing the legal prohibition or limitation to production, access, copying or other use of said information;

(ii) comply, in as complete a form as possible, with the request, in a manner that does not result in a violation of the asserted foreign law inhibition; and

(iii) take such reasonable steps, including seeking appropriate waivers from appropriate persons and entities, and making applications or joining in applications made by the requesting party, at the discretion of the requesting party, to appropriate courts or other bodies to attempt to meet the foreign legal requisites necessary to permit compliance or overcome the foreign legal barriers inhibiting compliance.

(d) Cooperation hereunder includes, but is not limited to the following, consistent with clauses (a), (c), and (e) through (g) herein:

(i) The Court Appointed Fiduciaries agree to produce to the DOJ and the DANY any investigative information that is subject to the control of the Court Appointed Fiduciaries.

(ii) The Court Appointed Fiduciaries agree to use their good offices, when requested by either the DOJ or the DANY, to facilitate production of investigative information in the custody or control of third parties.

(iii) At the request of the DOJ or the DANY, the Court Appointed Fiduciaries will direct any employee or other person subject to their con-

trol to testify in any duly convened grand jury, court, or other criminal, investigative, or administrative proceeding, and will, in addition, use their good offices and, at the expense of the DOJ, all reasonable efforts to persuade former employees, clients, and shareholders of BCCI, and others to cooperate with the requesting party and to testify in any such proceeding.

(iv) The Court Appointed Fiduciaries agree to waive any privileges, including the attorney-client, accountant-client, and work product privileges, with respect to any investigative information existing as of July 5, 1991.

(v) The Court Appointed Fiduciaries further agree to provide investigative information created after July 5, 1991 to the DOJ and the DANY relating to the tracing and locating of assets that flowed from or to BCCI and BCCI related entities and persons as a result of criminal activity.

(e) With respect to investigative information created after July 5, 1991, it is not the intent of this Agreement to require the Court Appointed Fiduciaries to waive the attorney client privilege in connection with documents or communications reflecting or containing legal advice to the Court Appointed Fiduciaries or attorney work product related thereto or otherwise pertaining to the subject matter of their appointments.

(f) Where investigative information is requested that:

(i) was created after July 5, 1991,

(ii) was created for the purpose of negotiating settlement of specific creditor or depositor claims, and

(iii) would, in the opinion of the Court Appointed Fiduciaries, pose a substantial risk of jeopardizing the specific negotiations or materially interfere with the lawful performance of their fiduciary obligations, the Court Appointed Fiduciaries will so inform the requesting party and provide the requesting party an estimate of how long the perceived inhibition to disclosure would persist, and will pursue, if requested by the requesting party, efforts, including resort to an appropriate judicial body, to permit the disclosure of the requested information under circumstances that will preserve confidential and secure treatment of the information and avoid the risk of interference noted above.

(g) The DOJ agrees to assume the reasonable costs of obtaining production of the foregoing for the DOJ and the DANY, upon advance notice of the approximate cost and a statement of the reasons why such production is necessary.

18. As part of the sentence imposed in connection with the entry of the pleas contemplated in paragraphs 1 and 4 above, the Court Appointed Fiduciaries agree that BCCI shall be barred from doing business within the United States except upon written notice to the DOJ and the express written permission of the appropriate Department or Agency of the United States, and with respect to doing business within the State of New York, except upon the further written notice to the DANY and the express written permission of the New York Banking, and with respect to business in the State of California, except upon the express written permission of California Banking. This provision is not intended to limit the activities of the Court Appointed Fiduciaries, pursuant to their respective court or other appointments, within

the United States, in connection with the liquidation of BCCI. Additionally, before any person, other than the Court Appointed Fiduciaries, is appointed to act in a trustee or fiduciary capacity affecting assets located in the State of New York, the approval of the DANY and the New York Banking shall be obtained, and with respect to assets in California, the approval of California Banking shall be obtained.

19. The Court Appointed Fiduciaries will obtain, with the assistance of DOJ and DANY where appropriate, all regulatory, judicial, administrative or other filings, notices, applications, consents, orders or approvals required to be obtained in order for the Court Appointed Fiduciaries, on behalf of BCCI, to satisfy fully their obligations under this Agreement, including seeking any necessary modification of the Temporary Restraining Order, the Court Appointed Fiduciaries' request for a preliminary injunction in the Section 304 Proceeding and/or the Consent Order entered in connection with the 304 Proceeding on October 16, 1991.

20. The Court Appointed Fiduciaries agree to:

(a) consent to the assessment in the amount claimed in the civil monetary penalty action brought by the Board of Governors against BCCI on July 29, 1991; and

(b) comply with the Divestiture Orders issued by the Board of Governors on March 4, 1991 and May 6, 1991 (the "Board Orders").

The Board of Governors agrees to stay and not seek execution of that assessment against any property forfeited under this Agreement or located outside the United States and to not file any claim for this assessment in the New York or California BCCI SA liquidations or in any liquidation proceeding involving BCCI in Luxembourg, the Cayman Islands or elsewhere.

21. Subject to paragraph 20, the Board of Governors, FDIC, RTC, OTS, OCC and the New York and California Banking agree to forego additional civil monetary penalty and other similar damage actions wherein they seeks funds from or make claims against the Worldwide Victims Fund, the liquidation estates in the New York and California liquidation proceedings for BCCI SA, and foreign assets and liquidation estates of BCCI, except as follows:

(a) The FDIC, RTC, OTS, OCC and New York and California Banking specifically reserve their ability, as conservators, liquidators and receivers, and potential conservators, liquidators and receivers, to file compensatory claims in the foreign liquidation process, in accordance with the appropriate foreign law. Provided, however, that if Independence Bank and First American are sold or otherwise disposed of without loss to the Bank Insurance Fund, the FDIC will not file any such claim.

(b) Further, the FDIC, RTC, OTS, OCC, New York Banking and California Banking further reserve their ability on behalf of U.S. financial institutions acting as such or in their corporate capacity, or acting as a conservator, liquidator or receiver to pursue civil contract claims.

(c) Additionally, the Board of Governors and joint issuers of the Board of Governors Orders may enforce the Board's Orders or subsequent orders issued by them in connection with the required divestiture of BCCI's interests in First American or Independence Bank.

(d) The SEC agrees to forgo any enforcement action against BCCI related to the acquisition and sale of stock and other securities in connection with the financial institutions described in the U.S. Information.

(e) The Court Appointed Fiduciaries also agree to cooperate with the Board of Governors, FDIC, RTC,

OTS, OCC, and SEC in their investigations of BCCI-related wrongdoing, and in related proceedings, in the manner described in paragraph 17 above.

(f) The Court Appointed Fiduciaries release any and all claims which they may have against the Board of Governors, FDIC, RTC, OTS, OCC, SEC, New York Banking and California Banking for actions taken in their respective regulatory capacities.

(g) Nothing in this Agreement bars New York Banking or California Banking from recovering their administrative expenses from their respective liquidation proceedings, in accordance with their respective state laws.

22. The United States and the DANY agree that, should the U.S. District Court and the N.Y. Supreme Court accept the pleas contemplated in paragraphs 1 and 4 above, and should the U.S. District Court enter the Forfeiture Order all pending criminal charges heretofore brought against BCCI by either of them shall be concluded and neither will bring any additional criminal charges against BCCI for matters occurring before July 5, 1991.

23. Pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure, the parties agree that the specific sentence, including the Forfeiture Order, set forth in this Agreement provides the appropriate disposition of this case and that the parties will ask the Court to enter a Judgment of Conviction and issue a Forfeiture Order consistent with this Agreement within 10 days of the entry of the pleas in this case, considering that time is of the essence (or such other date as the U.S. District Court may set). If the U.S. District Court accepts the agreed sentence including the forfeiture as set forth above, the Court Appointed Fiduciaries, on behalf of BCCI, may not withdraw the plea contemplated in paragraph 1 above as a matter of right under Federal Rule of Criminal Procedure 11(e)(2) and (4). The Court Appointed Fidu-

ciaries, on behalf of BCCI, understand that the Forfeiture Order of the U.S. District Court is enforceable both as a part of the sentence and in the same manner as a civil judgment. Should the judge refuse to accept the forfeiture aspect of the sentence, this Agreement shall become null and void and no party will be bound hereto.

24. The Court Appointed Fiduciaries and their attorneys acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to induce the Court Appointed Fiduciaries to enter a plea of guilty on behalf of BCCI. The Court Appointed Fiduciaries understand that failure to abide by any term of the Agreement is a violation of the Agreement and may render it null and void or result in such sanction as may be determined by the U.S. District Court or N.Y. Supreme Court. The Court Appointed Fiduciaries further agree this Agreement shall be filed and become a part of the record in the U.S. District Court and the N.Y. Supreme Court.

25. The patries hereto understand and agree that all of the agreements contained herein shall be conditional on each such agreement and if, for any reason, the U.S. District Court, the N.Y. Supreme Court, or any other United States court of competent jurisdiction shall find any provision of this Agreement to be unenforceable, this Agreement may become null and void, at the option of either the DOJ, DANY and Court Appointed Fiduciaries, and no party hereto will be bound hereto.

26. This Agreement may be executed in one or more identical counterparts, whether transmitted by telecopier or otherwise. Each such counterpart shall be deemed to be an original for purposes of this Agreement.

27. This Agreement sets forth the entire understanding of the parties hereto with respect to the subject matter hereof. Except as explicitly set forth in this Agreement, there are no representations, warranties, or inducements—

oral, written, expressed or implied—that in any way affect the validity of this Agreement or any of its terms. All prior negotiations, oral and written, are merged in this Agreement. Evidence of such negotiations, including prior drafts, shall not be admissible for any purpose in any proceeding related to this Agreement or its performance. Any amendments shall be with the mutual, written consent of the parties.

28. This Agreement shall be governed by and construed in accordance with the laws of the United States of America, except with respect to the matters contemplated in paragraph 4 through 7 hereof which, only to the extent necessary, shall be construed in accordance with applicable New York law.

29. The Court Appointed Fiduciaries agree to a tolling of any applicable statute of limitations as to criminal matters related to BCCI during the term of this Agreement and for 90 days thereafter.

WAIVER OF TRIAL RIGHTS

30. The Court Appointed Fiduciaries have read the charges against BCCI contained in the U.S. Information and the N.Y. Indictment, and those charges have been fully explained to them by their attorneys.

31. The Court Appointed Fiduciaries understand that in accordance with federal law, 18 U.S.C. Section 3013, upon entry of judgment of conviction, BCCI will be assessed $50 for each count, in addition to any other penalty imposed pursuant to this Agreement. Similarly, the Court Appointed Fiduciaries understand that in accordance with New York law, Penal Law Section 60.35, each of the pleading corporate entities upon entry of judgment of conviction, will be assessed a $100 mandatory surcharge and a $2 crime victim assistance fee, in addition to any other penalty imposed.

32. The Court Appointed Fiduciaries understand that by entering a guilty plea on behalf of BCCI, they surrender certain rights under federal and New York State law, including the following:

(a) If BCCI persisted in a plea of not guilty to the charges against it, BCCI would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge sitting without a jury. BCCI has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, BCCI, under New York law, and BCCI, the government and the judge, under federal law, all must agree that the trial be conducted by the judge without a jury.

(b) In the federal and New York prosecutions, if the trial is a jury trial, the jury would be composed of twelve laypersons selected at random. BCCI and its attorney would have an opportunity to seek the removal of prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising so-called peremptory challenges. The respective juries would have to agree unanimously before it could return a verdict of either guilty or not guilty, as to each count of the U.S. Information and the N.Y. Indictment. The respective juries would be instructed that BCCI is presumed innocent, and that it could not convict BCCI unless, after hearing all the evidence, it was persuaded of BCCI's guilt beyond a reasonable doubt, and that it was to consider each count of the U.S. Information and the N.Y. Indictment separately.

(c) If BCCI and the government waive the right to a jury trial, the appropriate court after hearing all the evidence, and considering each count separately, would determine whether or not it was persuaded of BCCI's guilt beyond a reasonable doubt in connection with the U.S. Information and the N.Y. Indictment.

(d) At a federal and New York state trial, whether by a jury or a judge, the prosecution would be required to present its witnesses and other evidence against BCCI. BCCI would be able to confront those prosecution witnesses and its attorney would be able to cross-examine them. In turn, although it would not be obligated to do so, BCCI could require the attendance of its witnesses within the territorial jurisdiction of the United States through the subpoena power of the court, or in connection with the N.Y. Indictment, as provided under New York law.

(e) BCCI would have the right to have the charges outlined in the U.S. Information brought by indictment upon the concurrence of not less than 12 members of a grand jury, comprised of at least 16 and not more than 23 persons, that there is probable cause for the charges.

(f) Should the plea to the U.S. Information occur prior to entry of the guilty plea to the New York Indictment, the Court Appointed Fiduciaries waive any defense to the N.Y. Indictment based upon the New York State Double Jeopardy law in order to permit the guilty plea to the New York State Indictment to be entered as provided herein.

33. The Court Appointed Fiduciaries, on behalf of BCCI, understand that by entering a plea of guilty as provided herein, the Court Appointed Fiduciaries, on behalf of BCCI, are waiving all the rights set forth in the prior paragraph. The Court Appointed Fiduciaries' attorneys have explained those rights to the Court Appointed Fiduciaries, and the consequences of the waiver of those rights as contemplated herein. The Court Appointed Fiduciaries understand that they are waiving all appellate issues that might have been available if they had exercised its right to trial.

34. Upon imposition of the sentence contemplated herein, the DOJ will move to dismiss the remaining charges against BCCI currently pending in any U.S. District Court.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of December 19th, 1991.

Agreed by United States, and the People of the State of New York:

By:

Department of Justice

Through:

William P. Barr
Attorney General

By /s/ George J. Terwilliger
GEORGE J. TERWILLIGER
Acting Deputy Attorney General

By /s/ Robert S. Mueller III
ROBERT S. MUELLER III
Assistant Attorney General
Criminal Division

By /s/ [Illegible] Acting
SHIRLEY D. PETERSON
Assistant Attorney General
Tax Division

By /s/ Stuart M. Gerson
STUART M. GERSON
Assistant Attorney General
Civil Division

People of the State of New York

By:

/s/ Robert M. Morgenthau
ROBERT M. MORGENTHAU
District Attorney
New York County

And the following
United States Attorneys:

/s/ J.B. Stephens
JAY B. STEPHENS
District of Columbia

/s/ Joe D. Whitley
JOE D. WHITLEY
N.D. Georgia

/s/ Robert W. Genzman
ROBERT W. GENZMAN
M.D. Florida

/s/ Lourdes G. Baird
LOURDES G. BAIRD
C.D. California

/s/ Dexter W. Lehtinen
DEXTER W. LEHTINEN
S.D. Florida

OTTO G. OBERMAIER
S.D. New York

Agreed by Court Appointed Fiduciaries

By:

But in the name and on behalf of the company by authority of the court and without personal liability

/s/ JD, CF, BAS

COMMISSAIRES OF BCCI HOLDINGS (LUXEMBOURG) S.A., not in their individual capacities

/s/ Brian Smouha
BRIAN SMOUHA

/s/ Jacques Delvaux
JACQUES DELVAUX

/s/ Constant Franssone
CONSTANT FRANSSONE

COMMISSAIRE OF BANK OF CREDIT AND COMMERCE INTERNATIONAL, S.A., not in his individual capacity

/s/ Brian Smouha
BRIAN SMOUHA

JOINT PROVISIONAL LIQUIDATORS OF BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) LTD., and INTERNATIONAL CREDIT AND INVESTMENT COMPANY (OVERSEAS) LTD., not in their individual capacities

/s/ Ian Wight
IAN WIGHT

ROBERT AXFORD

Agreed by U.S. Regulators:

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

By: /s/ William W. Wiles
WILLIAM W. WILES
Secretary

FEDERAL DEPOSIT INSURANCE CORPORATION

By: /s/ William Taylor
WILLIAM TAYLOR
Chairman

RESOLUTION TRUST CORPORATION

By: /s/ William Taylor
WILLIAM TAYLOR
Chairman

OFFICE OF THE COMPTROLLER OF THE CURRENCY

By: /s/ Robert L. Clarke
ROBERT L. CLARKE
Comptroller of the Currency

OFFICE OF THRIFT SUPERVISION

By: /s/ Timothy Ryan
TIMOTHY RYAN
Director

SECURITIES AND EXCHANGE COMMISSION

By: /s/ Richard C. Breeden
RICHARD C. BREEDEN
Chairman

Agreed by New York State Regulators:

SUPERINTENDENT OF BANKS OF THE STATE OF NEW YORK, in his capacity as Liquidator of the New York Agency of Bank of Credit & Commerce International, S.A.

By: /s/ Derrick D. Cephas
Name:
Title:

By:

JAMES E. GILLERAN

SUPERINTENDENT OF BANKS OF STATE OF CALIFORNIA, As Such and As Liquidator of California Property and Business of Bank of Credit and Commerce International, S.A.

Agreed by California State Regulators:

SUPERINTENDENT OF BANKS OF STATE OF CALIFORNIA, As Such and As Liquidator of California Property and Business of Bank of Credit and Commerce International, S.A.

/s/ James E. Gilleran
JAMES E. GILLERAN
Superintendent

APPENDIX B

[Filed Jan. 24, 1992]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Criminal No. 91-0655 (JHG)

UNITED STATES OF AMERICA

v.

BCCI HOLDINGS (LUXEMBOURG), S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) LIMITED, INTERNATIONAL CREDIT AND INVESTMENT COMPANY (OVERSEAS) LIMITED, *Defendants.*

ORDER OF FORFEITURE

The United States of America and the four corporate defendants in this case (collectively, "BCCI") have entered into a Plea Agreement dated December 19, 1991, by which the defendants agree to plead guilty to an offense under Title 18, United States Code, Section 1962, and to forfeiture of the assets of the four corporate defendants located in the United States pursuant to Section 1963 of Title 18.

As recited on the record today in open court, the Court has determined pursuant to Rule 11(e), Federal Rules of Criminal Procedure, that the Plea Agreement is acceptable to the Court. The Court has determined pursuant to Rule 11(f), Federal Rules of Criminal Procedure, that there is a factual basis for the pleas of guilty and for the

forfeiture of the defendants' assets as set forth in the Superseding Information, the Plea Agreement, the statements of counsel in open Court, and the testimony of the representative of the defendants.

It is hereby ORDERED, ADJUDGED and DECREED as follows:

1. Pursuant to Title 18, United States Code, Sections 1963(a)(1), (a)(2), and (a)(3), the following property located in the United States of the four corporate defendants is hereby condemned and forfeited to the United States of America:

(a) the deposits and other assets listed on Exhibit A, which Exhibit A is hereby made a part of this Order, except those funds listed on Exhibit A which are held by American Express Bank Ltd., Bank of California, Capital Bank Miami, and Oppenheimer & Co., Inc., because counsel have been unable at this time to reconfirm or update the list of assets held by those institutions. Counsel for the parties to this case shall provide to the Court, by January 29, 1992 at 12:00 noon, an updated list of forfeitable assets held by American Express Bank Ltd., Bank of California, Capital Bank Miami, and Oppenheimer & Co., Inc., at which time, upon approval by the Court, such assets shall become subject to this Order of Forfeiture.

(b) the net proceeds from the future sale or other disposition or transfer of any stock, security or other interest in Independence Bank, but not the stock, security or other interest itself;

(c) the net proceeds from the future sale or other disposition or transfer of any stock, security or other interest in First American Bankshares, Inc., but not the stock, security or other interest itself;

(d) the balance of the liquidation estates of the Los Angeles and New York agencies of BCCI, S.A., but not the estates themselves, upon completion of liquidation pro-

ceedings conducted by the New York banking and the California banking entities in accordance with the laws of California and New York. For purposes of the foregoing, the "liquidation estates" shall consist of all of the rights and interests of the Superintendent of Banks of the states of New York and California under their respective state law banking statutes with respect to the assets of BCCI, S.A. located in their respective states and the assets of the New York and California agencies of BCCI, S.A. The liquidation estates do not include the assets enumerated in Exhibit A; and

(e) the entirety of BCCI's ownership interests in all other property located in the United States, including, without limitations, real property and all tangible and intangible personal property, however held, whether subsequently identified, determined or discovered pursuant to paragraph 10 of the Plea Agreement, in the course of the ongoing liquidation proceedings described therein or otherwise identified, determined, or discovered in any manner at any time, but not property that may be brought into the United States by or on behalf of Court Appointed Fiduciaries of BCCI in the course of the management or disbursement of the liquidation estates as described in the Plea Agreement.

2. The Court finds that the above-listed forfeited assets constitute interests acquired or maintained by the defendants, in violation of Title 18, United States Code, Section 1962; or are interests in, securities of, claims against, or property or contractual rights of various kinds affording a source of influence over an enterprise which the defendants established, operated, controlled, conducted, or participated in, in violation of Title 18, United States Code, Section 1962; or are property constituting or derived from, proceeds the defendants obtained, directly or indirectly, from racketeering activity, in violation of Title 18, United States Code, Section 1962.

3. It is further ORDERED that, except as specifically excepted in paragraph 1(a) and as noted in paragraph 4, each of the financial institutions and entities listed on Exhibit A shall immediately pay to the United States Marshal for the District of Columbia or his duly authorized representative:

1) the entire contents of the accounts listed on Exhibit A, including interest accrued;

2) any funds transferred since July 5, 1991, from any account listed on Exhibit A that are still within the possession or control of the financial institution, regardless of the account into which those funds were transferred and regardless of the reason for the transfer; and

3) any other funds in any other account held by BCCI (Overseas) or International Credit and Investment Company (Overseas).

Such payments shall not be limited to the "Approximate Amounts" listed on Exhibit A if the balance as of this date is greater than the Approximate Amount. For the purposes of this paragraph, an "account listed on Exhibit A" includes any account that previously held funds listed on Exhibit A, or any account to which such funds have been transferred.

4. With respect to the funds listed on Exhibit A as being held on deposit in the Court Registry Investment System ("CRIS") interest-bearing account administered by the United States District Court for the Southern District of Texas, such funds are hereby ORDERED forfeited to the United States. In lieu of the immediate transfer of those funds pursuant to paragraph 3, the United States shall take all necessary steps pursuant to Title 28, United States Code, Section 2042, to obtain an order directing the transfer of those funds to the United States Marshal for the District of Columbia.

5. It is further ORDERED that to the extent necessary to carry out the terms of this Order, BCCI, pursuant to

the Plea Agreement, shall assist the financial institutions and entities listed on Exhibit A in the transfer of such funds.

6. It is further ORDERED that the United States Marshal's Service shall deposit all funds received pursuant to this Order of Forfeiture in the Department of Justice Seized Asset Deposit Fund Account (hereafter, "the Account") and invest it with interest as permitted by Title 28, United States Code, Section 524(c), as amended October 28, 1991.

7. Pursant to the ancillary hearing procedures set forth in Title 18, United States Code, Section 1963(1), no disbursements shall be made from the Account without further Order of this Court. Should it appear that no claim has been made with respect to particular assets transferred to the Account pursuant to Section 1963(1), or at such time as such claims to such assets have been resolved, the Court will entertain motions from the government for the disbursement of those assets.

8. As the proceeds identified in paragraphs 1(b) through (e) become available, the Department of Justice, on behalf of the United States, shall apply to this Court for appropriate Orders effecting the transfer and deposit of such proceeds into the Account. The notice provisions of Section 1963(1) shall apply to each asset so transferred to the Account pursuant to such further Orders.

9. Pursuant to Rule 32(b)(2), Federal Rules of Criminal Procedure, it is further ORDERED that each of the above listed properties, except as specifically excepted in paragraph 1(a) and as noted in paragraph 4, shall be seized *forthwith* by the United States Marshal for the District of Columbia or his duly authorized representative and disposed of in accordance with the law and this Order of Forfeiture.

The Clerk is hereby directed to send copies of this Order to all counsel of record and the United States Marshal.

IT IS SO ORDERED.

Entered this 24th day of January, 1992.

/s/ Joyce Hens Green
JOYCE HENS GREEN
United States District Judge

EXHIBIT A

Account No.	Account Name	Approx. Balance
Bank of New York		New York
018872-500	BCCI (Overseas) Barbados	202,708.55
8109803821	BCCI (Overseas) Barbados	101,108.90
019054-500	BCCI (Overseas) Bombay	3,245,017.16
8109803155	BCCI (Overseas) Bombay	851,642.06
8900054840	BCCI (Overseas) Bombay	159,383.66
018856-500	BCCI (Overseas) Cayman	1,834,405.29
8109292983	BCCI (Overseas) Cayman	50,919.08
8900051531	BCCI (Overseas) Cayman	745.86
8900053658	BCCI (Overseas) Cayman	0.00
8900054301	BCCI (Overseas) Cayman	300,027.55
8900054328	BCCI (Overseas) Cayman	310,849.60
8900054794	BCCI (Overseas) Cayman	33,057.60
8900054921	BCCI (Overseas) Cayman	152,093.70
019089-500	BCCI (Overseas) Panama	8,016,979.39
8109298752	BCCI (Overseas) Panama	144,240.44
8900053399	BCCI (Overseas) Panama	386,467.59
Subtotal		15,789,646.43
Citibank		New York
36054705	BCCI (Overseas)	11,064,150.00
36060398	BCCI (Overseas)	4,402.00
Custody Account	BCCI (Overseas)	1,181,398.00
Custody Acct 089543	BCCI (Overseas)	537,000.00
Subtotal		12,786,950.00
Court Registry Investment System		S.D. Tex.
86078	BCCI (Overseas) Macau	109,112.75
86047	BCCI (Overseas) Muscat	4,339,738.83
86052 [1]	BCCI S.A.—Abu Dhabi	60,563,405.50
86041	BCCI (Overseas) Seoul	80,770.71
Subtotal		81,709,103.07

[1] This account contains additional funds not subject to forfeiture. Only the amcunt specified, plus interest accrued since July 18, 1991, is subject to forfeiture.

Account No.	Account Name	Approx. Balance
Doha Bank Ltd.		New York
55804511	BCCI (Overseas)	500,308.00
First Florida		Tampa
440-757-7116	Capital Equiv. Dep.	15,299,703.58
First National Bank of Louisville		Louisville
70328615	BCCI (Overseas)	3,727,520.97
Hufstedler, Kaus & Ettinger		Los Angeles
Intermagnetics Trust Acct		487,448.84
Kemper Security		Chicago
1278-4388	BCCI (Overseas)	583,305.00
Mabon Securities		New York
04-4050	BCCI (Overseas)	2,661,808.53
Manufacturers Hanover		New York
(none)	BCCI (Overseas)	40,240.00
Paine Webber		New York
DN-R5056-01	BCCI (Overseas)	73000.00
Security Pacific Intl		New York
05007001	BCCI (Overseas) Abidjan	3,305,447.05
07012001	BCCI (Overseas) Cayman	4,124,193.31
04020101	BCCI (Overseas) Istanbul	1,723,590.57
04020023	BCCI (Overseas) Izmir, Turkey	308,079.19
04011002	BCCI (Overseas) Karachi	3,056,794.59
05011001	BCCI (Overseas) Khartoum	701,251.94
04012039	BCCI (Overseas) Manila	783,178.47
04020030	BCCI (Overseas) Mersin, Turkey	116,667.53
05008001	BCCI (Overseas) Monrovia	103,500.48
03005016	BCCI (Overseas) Paris, France	857,082.72
04018017	BCCI (Overseas) Seoul, Korea	5,714,329.75
04031016	BCCI (Overseas) Shenzhen China	589,044.22
05009001	BCCI (Overseas) Sierra Leone	2,056,883.83
04027001	BCCI (Overseas) Sri Lanka	1,818,758.32
05012001	BCCI (Overseas) Togo	104,511.45
Subtotal		25,363,313.42

Account No.	Account Name	Approx. Balance
Security Pacific National		New York
607750471	BCCI (Overseas) Abu Dhabi	1,785,845.00
607750491	BCCI (Overseas) Abu Dhabi	44,500,000.00
Subtotal		46,285,845.00
Total		$188,692,117.56

The following accounts and approximate amounts are as they appear on Schedule B of the Plea Agreement but have not been reconfirmed or updated by counsel:

American Express Bank Ltd. New York, New York	$ 60,255,910	Ref. #16211581 (From Acct. #703876)
	$ 31,793,704	Acct. #703876 (Includes Offsets)
	$ 30,009,792	Acct. #160300 [2] (From Acct. #703876)
	$ 12,027,031	Acct. # #53066; 353066; 53173; 353173; 53165; 353165; 698316; 714758; 53116; 52977; 352977; 705517; 3705517; and 711036
	$ 12,444,311	Brokerage Account-Deposit (Includes Offsets) (Account Number Unknown)
Bank of California New York, New York	$ 1,283,093	(Account Number Unknown)
Capital Bank Miami Miami, Florida	$ 24,215	Acct. #902205102
	$ 946,485	Acct. #0902205110
	$ 3,053,641	Cert. #085-0053580
	$ 1	Acct. #902204122

[2] This account contains additional funds not subject to forfeiture. Only the amount specified plus interest accrued since July 5, 1991 is subject to forfeiture.

Oppenheimer & Co., Inc.	$ 2,919,400	Acct. #05391184
New York, New York	$ 15,802,870	Client Acct. #05391180
	$ 6,184,803	Client Acct. #05391180
Total	$176,745,256	

APPENDIX C

[Filed Jun. 23, 1992]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Criminal No. 91-0655 (JHG)

UNITED STATES OF AMERICA

v.

BCCI HOLDINGS (LUXEMBOURG), S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL, S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) LIMITED, INTERNATIONAL CREDIT AND INVESTMENT COMPANY (OVERSEAS) LIMITED,

Defendants.

ORDER APPOINTING TRUSTEE

This matter came before the Court on the motion of the United States of America, the court-appointed fiduciaries for the corporate defendants, the District Attorney for New York County, and the Board of Governors of the Federal Reserve System ("Federal Reserve") for the appointment of a trustee to effect the sale or other disposition of all shares of stock in First American Corporation ("FAC") or its assets, including First American Bankshares, Inc. ("FAB") and FAB's subsidiaries.

A hearing was held on June 16, 1992 to assist the Court in determining whether granting the motion would be in the public interest. At the hearing, the parties to this action and others presented arguments in favor of granting the joint motion and additionally evidenced their

intent and understanding by filing Government Exhibits 1, 2, and 3. The latter was offered by Nicholas deB. Katzenbach, Chairman of FAB, who, in his official capacity, expressed his full encouragement and consent to the appointment of Harry W. Albright, Jr. as Trustee.

Upon consideration of the joint motion and the representations made at the hearing, the Court finds that appointment of Harry W. Albright, Jr., a person of impeccable credentials, as Trustee is authorized by 18 U.S.C. § 1963(e), will assist the satisfaction of obligations created by the plea agreement, and will substantially serve the public interest. Appointment of the Trustee, with his corresponding power and duties, will cause BCCI's relationship with FAC, FAB, and FAB's subsidiaries to be effectively severed, thereby ensuring public confidence in those entities, and will allow the expeditious and productive resolution of issues concerning BCCI's as yet undefined interest in those entities. Further, appointment of the Trustee will afford third parties a procedure for determining their rights, if any, to the proceeds of the sale or other disposition of FAC shares or assets.

I. Purpose of this Order

The purpose of this Order is to enable the corporate defendants ("BCCI") to comply with their obligation under the Plea Agreement to divest themselves of any interest they hold in Credit and Commerce American Holdings N.V. ("CCAH"), and its subsidiaries FAC and FAB, to enable the government to realize its interest, arising under the Plea Agreement and the Order of Forfeiture, in the proceeds of the sale or other disposition of BCCI's interest in CCAH and its subsidiaries, and to carry out the Divestiture Order issued by the Board of Governors of the Federal Reserve.

II. Appointment of Trustee

Accordingly, it is hereby ORDERED that Harry W. Albright, Jr. is appointed Trustee pursuant to 18 U.S.C. § 1963(e).

III. Powers and Duties of the Trustee

The Trustee shall collect and hold, subject to any existing lien, all the issued and outstanding shares of FAC, and shall sell or otherwise dispose of such shares or cause the boards of directors of FAC and FAB to sell or otherwise dispose of all assets owned or controlled directly or indirectly by FAC at any given time, including, without limitation, all of the issued and outstanding capital stock of FAB or of the FAB subsidiaries, consistent with the purposes of this Order, to a purchaser or purchasers approved by the Federal Reserve, and on terms and conditions (a) that are consistent with the taking of reasonable steps to obtain the best price for the shares or assets that can be obtained, taking into account need or agreement for infusion of new capital into First American subsidiary banks and reasonable banking standards; *provided* that the sale takes place expeditiously, but in any event within one year from the date of this Order or such further time as the Court may permit, and (b) that are approved by the Trustee and the Court.

The Trustee shall exercise all rights, titles, powers, and privileges of a shareholder of FAC, including, to the extent permitted by applicable law of the state of incorporation of the relevant corporation, the right to exercise exclusively any and all voting rights and other rights or benefits attached to, derived from, or otherwise attributable to the FAC shares, the right to amend or cause the amendment of the by-laws of FAC, FAB, and the FAB subsidiaries and to elect and remove, or cause the election or removal of, the directors of FAC, FAB, and the FAB subsidiaries, and to cause FAC, FAB, and the FAB sub-

sidiaries, acting through their respective boards of directors, to execute the purposes of this Order.

The Trustee shall have the right to incur and pay such reasonable expenses and charges, including fees for legal counsel and professional advisors, as he may deem appropriate in the performance of his duties herein stated, subject to Court approval as provided below.

The Trustee shall not be responsible for directing or managing the day-to-day operations of FAC, FAB, or the FAB subsidiaries. The Trustee, however, may cause the directors and officers of FAC to (i) provide the Trustee with information available to, or obtainable by them, relating to the valuation, direction, and management of the operations of FAC, FAB, and the subsidiaries of FAB, and (ii) provide the Trustee with the opportunity to attend all meetings of the respective boards of directors of FAC, FAB, and the subsidiaries of FAB.

IV. Reports

The Trustee shall provide the Court, on or before the 25th day after each calendar quarter: (1) statements of receipts, expenses, and charges on a cash basis for the preceding calendar quarter of the Trust and a statement of assets and liabilities on a cash basis as of the last day of such calendar quarter of the Trust, and (2) a written report summarizing the efforts and activities to effect the sale or other disposition of the FAC shares or assets.

V. Expenses of the Trustee

The reasonable expenses of the Trustee, as determined by the Court (hereafter "the expenses"), shall be paid at the end of each month beginning in the month in which the FAC shares are authorized to be transferred to the Trustee.

Until such time as the expenses can be offset against or reimbursed from the proceeds resulting from the sale

of the FAC shares or assets, as provided by 18 U.S.C. § 1963(e), the expenses shall be paid from the funds forfeited by BCCI pursuant to the Court's January 24, 1992 Order of Forfeiture as a first order of disbursement from the Custodial Account, after reimbursement of the court-appointed fiduciaries for the $5 million capital infusion previously ordered as a priority by the Court, described in the Plea Agreement and in Paragraph 6 of the Order of Forfeiture ("Custodial Account").

In the event that funds are not available to pay such expenses either from the sale or other disposition of the FAC shares or assets or from the Custodial Account, the expenses shall be paid from the Department of Justice Assets Forfeiture Fund ("the Fund"), as authorized by 28 U.S.C. § 524(c)(1)(A)(i). In the event that the Fund is used to pay the expenses of the Trustee, it shall be reimbursed as a first priority from the Custodial Account, after reimbursement of the court-appointed fiduciaries for the $5 million capital infusion, which in turn shall be reimbursed as a first priority from the proceeds of the sale of the FAC shares or assets.

Within ten days from the date the FAC shares are authorized to be transferred to the Trustee or from the date of this Order, whichever is later, the Department of Justice and the Trustee will submit to the Court for its approval a budget providing for the reasonable and necessary compensation and other expenses of the Trustee for the operation of the Trust pending the sale or other disposition of the FAC shares or assets. Such budget may be supplemented or revised from time to time with the approval of the Court.

VI. Distribution of Proceeds

It is further ORDERED that following the sale or disposition of all of the FAC shares or assets, the Trustee shall give notice of such sale or disposition to the Court,

counsel for the United States, the District Attorney for New York County, counsel for the court-appointed fiduciaries, counsel for the Board of Governors of the Federal Reserve, all shareholders of record of CCAH, pursuant to a list to be provided by the Federal Reserve Board, and all creditors of CCAH and all creditors of Credit and Commerce Investment, B.V. ("CCAI"), as reflected on the books and records of CCAH and CCAI and as set forth in lists certified to the Trustee by CCAH and CCAI. Consistent with the Court's Order of Forfeiture of January 24, 1992, any proceeds remaining after the payment or reimbursement of the expenses of the Trustee, as provided in Paragraph V, shall be used to pay, in the following order of priority, such bona fide debts of FAB, FAC, CCAI, and CCAH as are required by binding contract or law to be paid. Any remaining proceeds should be held by the Trustee in an interest-bearing account or instrument pending further order of the Court. Within thirty days of receipt of notification from the Trustee of the sale or other disposition of all the FAC shares or assets, the United States of America and the Federal Reserve will provide the Court with a determination of what portion of FAC's stock BCCI owns and is subject to forfeiture. Upon the filing of such determination, the United States shall take all necessary steps, pursuant to 18 U.S.C. § 1963(*l*), to notify any person or entity with a potential legal right, title, or interest in the proceeds of the sale or disposition that a portion of those proceeds are subject to forfeiture to the United States.

No portion of the proceeds of the sale or disposition shall be disbursed by the Trustee except with respect to the expenses of the Trustee and bona fide debts as set forth above or as otherwise as ordered by the Court. The Trustee shall promptly apply to the Court for authority to transfer the portion of the proceeds of the sale or disposition which the United States does not claim to

be subject to forfeiture to the parties entitled to that property.

IT IS SO ORDERED.

/s/ Joyce Hens Green
JOYCE HENS GREEN
United States District Judge

June 23, 1992

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Criminal No. 91-0655 (JHG)

UNITED STATES OF AMERICA

v.

BCCI HOLDINGS (LUXEMBOURG), S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL, S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) LIMITED, and INTERNATIONAL CREDIT AND INVESTMENT COMPANY (OVERSEAS) LIMITED, *Defendants.*

TRUSTEE'S NOTICE OF SALE

PLEASE TAKE NOTICE that, pursuant to the Order Appointing Trustee issued by United States District Judge Joyce Hens Green and filed on June 23, 1992 in the United States District Court of the District of Columbia (a copy of which is attached to this Notice), all of the assets of First American Corporation to be sold under the Order Appointing Trustee have been sold.

Dated: June 6, 1994
New York, New York

Very truly yours,

/s/ Harry W. Albright Jr.
HARRY W. ALBRIGHT JR.
Trustee
Suite 1914
1270 Avenue of the Americas
New York, New York 10020
(212) 332-2620

To: The Honorable Joyce Hens Green
and all persons listed in the
attached Certificate of Service

APPENDIX E

[Filed Dec. 21, 1994]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Criminal No. 91-0655 (JHG)

UNITED STATES OF AMERICA

v.

BCCI HOLDINGS (LUXEMBOURG), S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL, S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) LIMITED, INTERNATIONAL CREDIT AND INVESTMENT COMPANY (OVERSEAS) LIMITED, *Defendants.*

PROCEDURAL ORDER

On January 24, 1992, this Court entered an Order of Forfeiture directing that all assets of the BCCI defendants in the United States be forfeited to the United States. In particular, paragraph 1(c) of the Order of Forfeiture directed the defendants to forfeit BCCI's interests in "the net proceeds from the future sale or other disposition or transfer of any stock, security or other interest in First American Bankshares, Inc., but not the stock, security or other interest itself."

On June 23, 1992, the Court appointed Harry W. Albright, Jr., as Trustee to hold the stock of First American Corporation ("FAC"). The Order Appointing Trustee authorized the Trustee to "sell or otherwise dispose of [the FAC] shares or cause the Boards of Directors to sell or otherwise dispose of all assets owned or con-

trolled directly or indirectly by FAC." Thereafter, the Trustee and the Board of Directors of First American Bankshares, Inc., ("FAB") determined that the maximum price would be obtained by causing FAB to sell the stock or assets of its subsidiaries, while retaining certain BCCI-related and other liabilities. This decision, consistent with the Trustee's mandate to obtain the best price, resulted in more than $460 million being realized from the sale of these assets. Given that back in June of 1992 the Federal Reserve estimated FAB's liabilities to exceed its assets by approximately $300 million, the gain achieved by the Trustee was truly remarkable. On June 6, 1994, the Trustee filed his Notice of Sale notifying the Court and all parties that the sale of FAB's assets was complete. All concerned entities agree that the Trustee exercised sound business judgment in the manner in which he chose to manage this delicate situation.

On July 11, 1994, in accordance with the Order Appointing Trustee, the Federal Reserve and the Department of Justice ("DOJ") jointly filed with the Court a report setting forth their determination of what portion of the capital stock of Credit and Commerce American Holdings, N.V. ("CCAH")[1] is owned by BCCI and is subject to forfeiture (the "Notice Regarding Ownership"). The Notice Regarding Ownership states, *inter alia*, that BCCI and its nominees held or controlled 61.156% of the capital stock of CCAH.

Thereafter, DOJ submitted a proposed order of forfeiture which included "61.156 percent of the net proceeds of the sale of the assets of [FAB] and [FAC]" with an approximate value of $287 million. DOJ recognized that BCCI technically had an ownership interest only in

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[1] CCAH owns 100% of the stock of Credit and Commerce American Investments ("CCAI"), which owned 100% of the stock of FAC, which, in turn owns 100% of the stock of FAB. Pursuant to the Order Appointing Trustee, CCAI transferred the stock of FAC to the Trustee, who is now the sole stockholder of FAC.

CCAH, but asserted that 18 U.S.C. § 1963(e) authorized the Court to disregard the corporate form and reach the assets of BCCI's wholly-owned subsidiaries.

This proposal prompted an objection from the Trustee and the Boards of Directors of FAB and FAC, who asserted that BCCI's forfeitable interest was more accurately defined as "61.156 percent of the amount distributable to CCAH shareholders as a consequence of the liquidation or other disposition of their indirect interest in First American Corporation". This proposal similarly estimated BCCI's interest to be $287 million. It was asserted that the Boards of Directors of FAB and FAC had to liquidate FAB and FAC in accordance with Virginia corporate dissolution procedures before BCCI would obtain a forfeitable interest. The Trustee further maintained, as had DOJ, that a "procedural order" was required to instruct the boards of directors how to distribute the funds.

All interested entities subsequently briefed the legal, procedural and practical issues involved. DOJ asserted that the Court should exercise its broad authority under 18 U.S.C. § 1963(e) to seize the assets at the FAB level and not leave the dissolution of FAB and FAC to the vagaries of state law. The Court-Appointed Fiduciaries agreed at least with the legal principle that the Court had the authority to seize the assets prior to any distribution to CCAH. The Trustee and the Boards of Directors of FAB and FAC strongly disagreed. They asserted that the Court's authority was not nearly as broad as the United States believed, and that forfeiture at the FAB level was not consistent with the Plea Agreement, the First Order of Forfeiture or the Order Appointing Trustee. The District Attorney of New York County opined that the United States' position was ambiguous and could lead to unintended confusion.

Because of these divergent views, a hearing was held on December 19, 1994. The hearing served to focus all on the true issue at hand: whether the Court *should*—

not whether it could—forfeit the funds at the FAB level or whether the Trustee and the boards of directors should dissolve FAB and FAC before any forfeiture occurs. The Trustee and the boards of directors did not challenge this Court's authority to forfeit the money at the FAB level; rather, they stated that they should be given the opportunity to continue on their successful path.

The Court reviewed the respective positions, and has, this date, entered an Order of Forfeiture which provides for the forfeiture of 61.156% of the amount distributable to CCAH shareholders as a consequence of the liquidation or other disposition of BCCI's indirect interest in FAC. This Order of Forfeiture was not entered because of this Court's view that it lacked the authority to forfeit the funds at the subsidiary level. Indeed, 18 U.S.C. § 1963(e), applied in the context of this truly extraordinary case, grants the Court broad discretion to take any necessary action. Nonetheless, the more appropriate and prudent exercise of this discretion is to refrain from utilizing it to its fullest extent and to permit those whose judgment has proven so sound to continue their chosen course. This decision does not, in any way, suggest a lack of confidence in the United States' proposal. The United States has worked faithfully and fought tenaciously to achieve the maximum possible return for the victims of this tragedy and it has shown a deft ability to manage this remarkable case.

The proceeds of the sale of FAB's assets were received by, and are currently under the control of, FAB. FAB and FAC must complete the liquidation of their assets and liabilities in accordance with Virginia law before they can distribute funds to their respective shareholders, FAC and the Trustee. The Trustee has submitted a proposed order setting forth procedures for completion of the steps by which the United States and other persons entitled thereto can realize the value of their interests in CCAH and its subsidiaries. The Court has determined that the

proposal is an appropriate means of completing the distribution process so that funds can be made available to the United States government and the victims of BCCI as expeditiously as possible,[2] and the Court has every confidence that the Trustee will act in full accordance with the goal of a speedy, fair and just resolution of these matters.

Accordingly, it is hereby ORDERED that:

1. Upon the entry of this Order, the Trustee shall cause the Boards of Directors of FAB and FAC each promptly to adopt a Plan of Voluntary Dissolution and Complete Liquidation (the "Dissolution Plans") in accordance with this Order and the applicable provisions of the Virginia Stock Corporation Act (the "Virginia Act").

2. Such Dissolution Plans shall provide for, and promptly upon the adoption thereof the Trustee shall cause FAB and FAC promptly to give, written notice to all "known claimants" (the "Notice") in accordance with the provisions of Section 13.1-746 of the Virginia Act. For purposes of this Order, the term "known claimants" shall mean all persons who: (1) have instituted a proceeding before a court, arbitrator or governmental agency (a "Proceeding") in which relief has been demanded of FAB or FAC; (ii) have overtly manifested to FAB or FAC in writing an awareness of or intention to assert a claim against FAB or FAC on the basis of specified facts

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[2] The Court has determined that the use of a "claims bar" as suggested by the United States and the Court-Appointed Fiduciaries is unwarranted. Although this is by no means a standard corporate dissolution, there is no indication at this point that the unknown potential liabilities will cause any serious delay in the distribution of the assets to the victims (particularly in light of the known potential liabilities). Should there come a time when any of the entities involved herein determine that the absence of a bar has served to hinder the expeditious distribution of the assets, the Court will entertain the appropriate motion or act *sua sponte*.

or theories, including a claim for payment of a bona fide debt required by binding contract or law to be paid (collectively, "asserted claims"); or (iii) have been determined by the Boards of Directors of FAB and FAC to have claims or contingent claims that are possible of assertion against FAB or FAC ("unasserted or contingent claims"). Notwithstanding the foregoing, the Notice need not be given to any known claimant which has already instituted a Proceeding or which is a United States federal, state or municipal governmental entity which has or may have a claim for taxes against FAB or FAC.

3. In addition, the Trustee shall cause FAB and FAC each to publish notice of its liquidation under its Dissolution Plan and require that persons with claims against FAB or FAC present their claims in accordance with such notice (the "Publication Notice"). The Publication Notice shall be published once a week for three consecutive weeks in a newspaper of general circulation in each city in the United States where FAB or FAC or any of their subsidiaries or United States affiliates had operations at any time since January 1992, and in addition shall be published once a week for three consecutive weeks in *The Wall Street Journal* and any other publications of national circulation as the Trustee deems appropriate. The Publication Notice shall contain the same information contained in the Notice.

4. (a) The Notice and the Publication Notice shall state that, except for claims that are the subject of a Proceeding, written confirmation of the claim or a written description of the claim shall be delivered to FAB or FAC by a date specified, which date shall be 120 days from the first date of publication of the Publication Notice.

(b) The Notice shall state that, except for (i) claims admitted by FAB or FAC; and (ii) asserted claims that have been contested in writing by FAB, FAC or the

Trustee, the claim of any known claimant to whom Notice is provided shall be barred in accordance with the Virginia Act if the claimant does not (A) deliver written confirmation of the claim or a written description of the claim to FAB or FAC, as appropriate, by the date specified in the Notice; and (B) commence a Proceeding to enforce the claim within 90 days from the delivery of written confirmation of the claim or a written description of the claim to FAB or FAC. In addition, the Notice and Publication Notice shall state that all Proceedings brought as civil actions in the United States District Court for the District of Columbia shall be designated as related cases to *United States v. BCCI Holdings, et al.*, Criminal No. 91-0655 (JHG).

5. (a) As promptly as practicable following the expiration of the 120-day notice period specified in the Notice and the Publication Notice, the Trustee shall cause each of the Boards of Directors of FAB and FAC to deliver to the Trustee a list (the "Lists of Claims and Contingencies") of all (i) Proceedings against FAB or FAC, and (ii) asserted claims against FAB or FAC indicating, to the extent practicable, which of such claims are or will be contested by FAB or FAC. The Lists of Claims and Contingencies shall include as exhibits lists (the "Reserve Lists") which shall indicate, to the extent practicable, (A) all unasserted or contingent claims and which of such unasserted or contingent claims are or will be contested by FAB or FAC, (B) the good faith determination by the Boards of Directors of FAB and FAC, based upon such information as they shall deem appropriate, of the amount appropriate to pay, discharge or provide in full for, each such (i) Proceeding, contested asserted claim and contested unasserted or contingent claim if there shall be a "final disposition" adverse to FAB or FAC of such Proceeding or claim, and (ii) asserted claim and unasserted or contingent claim that is uncontested but not yet paid or payable in full, and

(C) an estimated amount for unknown claims and contingencies. For purposes of this Order, "final disposition" shall mean a final judgment or a final unconditional settlement dismissing the action or claim with prejudice, which judgment or settlement is not subject to further judicial review either by right of appeal or petition for certiorari. FAB and FAC will submit amended Lists of Claims and Contingencies and Reserve Lists on a quarterly basis or sooner if there are significant changes between submissions to add or delete Proceedings and claims (asserted or unasserted) or contingent claims and shall deliver such Lists, as amended, to the Trustee.

(b) As promptly as practicable following the expiration of the 120-day notice period, the Trustee shall prepare a List (the "Trustee Expense List"), in the form previously approved by the Court on June 17, 1994, estimating the amount adequate to cover his expenses through the termination of his duties under the Order Appointing Trustee, provided, however, that such estimates shall not be binding on the Trustee and shall be subject to adjustment from time to time.

(c) As promptly as practicable following the expiration of the 120-day notice period, the Trustee shall cause the Boards of Directors of FAB and FAC to deliver to the Trustee a List (the "FAB and FAC Expense and Indemnity List") in which the FAB Board shall estimate the amount adequate to cover all expenses of FAB and FAC through the final dissolution of FAB and FAC, including estimated expenses of prosecution and defense of Proceedings and contested claims in favor of and against FAB and FAC, and provisions for indemnification of current and former officers and directors of FAC, FAB and their affiliates, provided, however, that such estimates shall not be binding on the Trustee, FAB or FAC and shall be subject to adjustment from time to time.

6. Promptly following receipt of the Lists described in paragraphs 5(a) and 5(c) (and any amendment there-

to), the Trustee shall (a) file such Lists and the Trustee Expense List with the Court (the Reserve Lists and the FAB and FAC Expense and Indemnity List, and amendments thereto, together with any Trustee comments thereon, and the Trustee Expense List, all to be filed under seal), and (b) serve copies upon the Department of Justice, the Board of Governors of the Federal Reserve System, the Court-Appointed Fiduciaries and the District Attorney of New York County.

7. Promptly following the last to occur of (a) the final disposition of the action styled as *Hamid v. Price Waterhouse, et al.* (which asserts damages that exceed all proceeds of the sale of the FAC and FAB assets), including all claims consolidated therewith against FAB, FAC and all present or former directors, officers and corporate affiliates thereof, and (b) the filing by the Trustee of the Lists of Claims and Contingencies and Reserve Lists, the Trustee shall cause the Boards of Directors of FAB and FAC to establish accounts on their books, in the following order of priority:

(i) FAB shall establish a general account (the "Trustee Expense Account") in such amount as estimated by the Trustee as adequate to cover his expenses under the Order Appointing Trustee through the termination of this duties under the Order Appointing Trustee;

(ii) FAB shall establish one or more general accounts (the "FAB General Accounts") in which FAB shall provide (A) an amount that the Board of Directors of FAB determines to be adequate to cover all expenses of FAB and FAC through the final dissolution of FAC, including but not limited to estimated expenses of prosecution and defense of Proceedings and contested claims in favor of and against FAB and FAC, and provision for indemnification of current and former officers and directors

of FAC, FAB and their affiliates, and (B) $10 million, received by FAB and held separately pursuant to the Settlement Agreement dated February 25, 1994 among FAB, FAC, the Trustee, and Sheik Bin Mahfouz and the other parties thereto and filed with this Court (the "Mahfouz Settlement Agreement");

(iii) FAB shall establish a reserve account (the "FAB Claim Reserve Account") equal in amount to the total dollar amounts shown on FAB's Reserve List; and

(iv) FAC shall establish a reserve account (the "FAC Claim Reserve Account") equal in amount to the total dollar amounts shown on FAC's Reserve List.

The Trustee Expense Account, the FAB General Accounts and the FAB Claim Reserve Account are referred to collectively as the "FAB Accounts".

8. Promptly upon the establishment of the accounts described in paragraph 7, the Trustee shall cause the Board of Directors of FAB to transfer to FAC an amount, in cash or readily marketable securities, equal to the excess of (i) cash and the market value of such securities then held by FAB over (ii) the aggregate of the amounts in the FAB Accounts. The Trustee shall cause the Board of Directors of FAC to transfer to the Trustee, immediately following the transfer to FAC from FAB, an amount, in cash or readily marketable securities, equal to the excess of (x) cash and the market value of such securities then held by FAC over the total of (y) the amount of the FAC Claim Reserve Account, and (z) any applicable income and withholding taxes.

9. (a) Simultaneously with the transfer from FAC to the Trustee, the Trustee shall establish or cause to be established on the books of the Trustee one or more accounts, in the following order of priority, as follows:

(i) One or more CCAI/CCAH Operating Accounts in such amount as the Trustee shall be advised (in a CCAI/CCAH Expense List provided by CCAI and CCAH) has been estimated to be adequate to cover all expenses of CCAI and CCAH through the final dissolution of CCAI and CCAH, including but not limited to estimated expenses of prosecution and defense of Proceedings and contested claims in favor of and against CCAI and CCAH;

(ii) A CCAI Claim Reserve Account in such amount as the Trustee shall be advised (in a CCAI Reserve List provided by CCAI) has been estimated to be adequate to pay, discharge or provide in full for each Proceeding, claim or contingent claim against CCAI, including claims for payment of bona fide debts as are required by binding contract or law to be paid, if there shall be a final disposition adverse to CCAI of each such Proceeding, claim and contingent claim that is contested by CCAI or the Trustee;

(iii) A CCAH Reserve Account in such amount as the Trustee shall be advised (in a CCAH Reserve List provided by CCAH) has been estimated to be adequate to pay, discharge or provide in full for each claim or contingent claim against CCAH, including claims for payment of bona fide debts as are required by binding contract or law to be paid, if there shall be a final disposition adverse to CCAH of each Proceeding, claim and contingent claim that is contested by CCAH or the Trustee; and

(iv) A Suspense Account (the "Trustee Suspense Account") equal in amount to the excess of (A) the assets transferred by FAC to the Trustee over (B) the aggregate amount of the CCAI/CCAH Operat-

ing Accounts, the CCAI Claim Reserve Account and the CCAH Claim Reserve Account.

The CCAI/CCAH Operating Accounts, the CCAI Claim Reserve Account and the CCAH Claim Reserve Account are referred to collectively as the "CCAI/CCAH Accounts."

(b) The Trustee shall file the "CCAI/CCAH Expense List" and the "CCAI and CCAH Reserve Lists" with this Court under seal and serve copies upon the United States, the Board of Governors of the Federal Reserve System, the Court-Appointed Fiduciaries and the District Attorney of New York County. Amounts received from time to time by the Trustee from any source for the account of CCAI or CCAH shall be credited to a CCAI/CCAH Account, if needed, or to the Trustee Suspense Account. The Trustee may delegate management of the CCAI/CCAH Accounts to FAB or a trust company having assets exceeding $10 billion.

(c) Decisions regarding the payment or non-payment by FAC or CCAI of intercorporate debt to CCAH shall be made in consultation with the Federal Reserve Bank of New York ("the New York Fed"), as principal shareholder of CCAH. If payment of such intercorporate debt is determined to be prudent or necessary to comply with applicable law or the purposes of this Order, any payment for the benefit of CCAH shall be made to a CCAH Account designated by the Trustee, and the New York Fed, as principal shareholder of CCAH, shall cause CCAH to provide any necessary and appropriate releases to FAC or CCAI, as the case may be.

10. Promptly following the establishment of the accounts described in Paragraph 9, the Trustee shall apply to this Court for authority to transfer to the United States Marshal's Service from the Trustee Suspense Account an amount, in cash or readily marketable securities, equal to 61.156% of the amount in the Trustee Suspense Account,

in accordance with the Order of Forfeiture entered by this Court on December 21, 1994, less any applicable income and withholding taxes.

11. In accordance with the Abu Dhabi Settlement Agreement,[3] immediately after the transfer referred to in Paragraph 10, the Trustee shall transfer (i) to the New York Fed, for the benefit of the Court-Appointed Fiduciaries, from the Trustee Suspense Account an amount, in cash or readily marketable securities, equal to 37.601% of the amount in the Trustee Suspense Account immediately before the transfer referred to in Paragraph 10, less $40 million and less any applicable income and withholding taxes; and (ii) to FAB, as a contribution to capital, an amount, in cash or readily marketable securities, equal to $40 million.

12. In accordance with the Order Appointing Trustee, promptly following the transfers provided in Paragraphs 10 and 11 above, the Trustee shall apply to this Court for authority to transfer the amount remaining in the Trustee Suspense Account to the persons, determined by this Court to be entitled thereto; *provided* that if the right of any person other than the United States or the New York Fed to receive a portion of the Trustee Suspense Account is contested in, or as a result of, any Proceeding pending or claim asserted at the time the Trustee makes a transfer to the United States and the New York Fed, the amount that otherwise would be transferred to such person shall be transferred by the Trustee to the Court Registry Investment System, or as otherwise directed by the Court, pending the outcome of such Proceeding or resolution of such contested claim.

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[3] The Settlement Agreement dated January 21, 1994 among FAB, FAC, the Trustee, the Abu Dhabi Parties (as defined therein) and the other parties thereto provided that the New York Fed would return to FAC $50 million of the amount transferred to it on account of its holdings of CCAH stock, less the $10 million received under the Mahfouz Settlement Agreement (*see* Paragraph 7(ii)).

13. On a quarterly basis, the Trustee shall (a) review the Trustee Expense Account, (b) cause the Board of Directors of FAB and FAC to review their Accounts and their respective Lists of Claims and Contingencies, Reserve Lists, and FAB and FAC Expense and Indemnity List and make such adjustments to their Accounts as they deem appropriate, in consultation with the Trustee, and (c) request CCAI and CCAH to review the CCAI/CCAH Accounts, the CCAI/CCAH Expense List and the CCAI and CCAH Reserve Lists and propose amendments to such Accounts as they deem appropriate. Following such review the Trustee shall review the status of all of the Accounts with the Department of Justice, the Board of Governors of the Federal Reserve System, the Court-Appointed Fiduciaries, and the District Attorney of New York County, and following such review, shall (a) cause FAB to transfer to FAC an amount, in cash or readily marketable securities, equal to the excess of (i) cash and the market value of such securities then held by FAB over (ii) the aggregate of the amounts then reflected in the FAB Accounts, (b) cause FAC to transfer to the Trustee, immediately following the transfer from FAB, an amount, in cash or readily marketable securities, equal to the excess of (x) cash and the market value of such securities then held by FAC, over the total of (y) the total dollar amounts shown on the then current FAC Reserve List, and (z) any applicable income and withholding taxes. The Trustee also shall reallocate the amounts then in the CCAI/CCAH Accounts and the amounts received from FAC among the CCAI/CCAH Accounts and the Trustee Suspense Account based on the CCAI and CCAH review. If any quarterly review by FAB or FAC reflects additional amounts required by FAB or FAC, the Trustee shall transfer to FAB or FAC from the CCAH Claim Reserve Account, the CCAI Claim Reserve Account, or the CCAI/CCAH Operating Accounts, in that order of priority, the lesser of the amount of additional funds required or the aggregate amounts then reflected in the CCAI/CCAH Accounts.

14. The Trustee shall, on a quarterly basis coinciding with his regular reports to this Court, transfer the balance in the Trustee Suspense Account (i) first to the New York Fed until it shall have received up to $50 million [4] and (ii) thereafter to the United States Marshal's Service, the New York Fed, and the other persons entitled thereto, in accordance with their interests as determined by Order of this Court (subject to the proviso contained in Paragraph 12), less in each case applicable income and withholding taxes.

15. At such time as all claims, contingent claims, obligations, liabilities and expenses of FAB, FAC, CCAI and CCAH of any nature have been resolved, paid or discharged in full, the Trustee shall cause FAB and FAC to transfer to the Trustee all assets then held by FAB and FAC. Immediately thereafter the Trustee shall retain an amount estimated by him as adequate to cover his remaining expenses and shall transfer the balance in the CCAI/CCAH Accounts and the Trustee Suspense Account (a) first to the New York Fed to the extent of any amounts then due to it pursuant to clause (i) of Paragraph 14 above, and (b) thereafter, to the extent of amounts remaining in such Accounts, to the United States Marshal's Service, the New York Fed and the other persons entitled thereto, in accordance with their interests as determined by Order of this Court (subject to the proviso contained in Paragraph 12), less in each case any applicable income and withholding taxes.

16. At such time as all expenses of the Trustee have been paid in full, the Trustee shall transfer all assets then held by the Trustee to the United States Marshal's Service, the New York Fed and the other persons entitled thereto,

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[4] The Transfer first to the New York Fed is intended to reimburse the New York Fed for the amounts that would have been earlier transferred to it pursuant to Paragraph 11 of this Order but for provisions contained in the Abu Dhabi Settlement Agreement. *See* Paragraph 11 above and the note thereto.

in accordance with their interests as determined by Order of this Court, less in each case any applicable income and withholding taxes.

IT IS SO ORDERED.

December 21, 1994

/s/ Joyce Hens Green
JOYCE HENS GREEN
United States District Judge

APPENDIX F

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Criminal Number 91-0655 (JHG)
Defendants 01-04

UNITED STATES OF AMERICA

v.

BCCI HOLDINGS (LUXEMBOURG), S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL, S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) LIMITED, and INTERNATIONAL CREDIT AND INVESTMENT COMPANY (OVERSEAS) LIMITED, *Defendants.*

NOTICE REGARDING BENEFICIAL OWNERSHIP OF CCAH SHARES

This notice responds to the directive in the Court Order Appointing Trustee (dated June 23, 1992, as amended on August 19, 1993) issued in the above-captioned case ("Trust Order"). The Trust Order directed the United States and the Federal Reserve to determine "what portion of [First American Corporation] stock BCCI owns and is subject to forfeiture," and to provide that determination to the Court. This notice is intended to comply with the Court's direction.

BCCI's beneficial ownership of FAC stock or assets, or the proceeds thereof, derives from its beneficial interest in the equity of FAC's top-tier parent company, Credit and Commerce American Holdings, N.V. ("CCAH").[1]

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[1] CCAH is the sole shareholder of Credit and Commerce American Investment, B.V. ("CCAI"), which is, in turn, the sole shareholder of FAC.

The beneficial interest of BCCI in the stock of CCAH results from the fact that several individuals and companies acted as nominees for BCCI. These nominees held legal title to the shares of CCAH, but held those shares on behalf of BCCI.

As a result of continuing investigations conducted by staffs of the Federal Reserve, the Office of the District Attorney of New York County, and the United States Department of Justice, as well as settlement agreements reached in matters related to BCCI, we have been able to conclude the following with regard to shares of CCAH. The evidence we have obtained indicates that the shareholders listed on Exhibit A acted as BCCI nominees, and the CCAH shares registered in their names are beneficially owned by BCCI and are subject to forfeiture. The shares listed on Exhibit B are beneficially owned by BCCI and the listed shareholders have voluntarily relinquished the CCAH shares registered in their names to the Department of Justice for the purpose of forfeiture as a result of settlement agreements. The shares identified on Exhibits A and B total 176,815, or 61.156 percent, of the 289,120 outstanding shares of CCAH. In addition, 81,876 CCAH shares, or 28.319 percent of those outstanding, formerly owned by persons or entities connected with the government of Abu Dhabi have been transferred to the Federal Reserve Bank of New York as agent for the Board of Governors of the Federal Reserve System pursuant to an agreement among the Abu Dhabi parties, the Board, the District Attorney's Office and the Department of Justice (the "Geneva Agreement"). The remaining 32,429 shares, or 10.938 percent, are registered in the names set forth on Exhibit C.[2]

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[2] With respect to the 28,837 shares held of record by Burford Investments Ltd listed on Exhibit C, the Abu Dhabi parties have assigned any rights they have in such shares to the Federal Reserve Bank of New York pursuant to the Geneva Agreement, and

Respectfully submitted,

/s/ J. Virgil Mattingly
J. VIRGIL MATTINGLY
General Counsel
Board of Governors of the
Federal Reserve System

ROBERT D. SHARP
Acting Director

STEFAN D. CASSELLA
Acting Deputy Director

By: /s/ Stefan Cassella
ROBERT C. DALTON
Trial Attorney
Asset Forfeiture Office
P.O. Box 27322
Central Station
Washington, D.C. 20038
(202)-514-1263

---

we anticipate that the right to the proceeds of these shares will ultimately be held by that Reserve Bank as agent for the Board of Governors pursuant to agreements.

EXHIBIT A

BCCI'S EQUITY INTEREST IN CCAH HELD THROUGH NOMINEES

Nominee Shareholder	Number of Shares Held	Percentage
Faisal Saud Al Fulaij	26,439	9.14
Mohammad M. Hammoud	18,200	6.29
A. R. Khalil	13,250	4.58
TOTAL	57,889	20.022

EXHIBIT B

SHARES BENEFICIALLY OWNED BY BCCI SUBJECT TO VOLUNTARY TRANSFER BY REGISTERED SHAREHOLDERS

Registered Shareholder	Number of Shares Held	Percentage
Kamal Adham	36,493	12.62
Adham Corporation	7,410	2.56
Mashriq Holding Company	27,986	9.68
Humaid Bin Rashid Al Naomi	16,824	5.82
A.M. Shorafa	28,748	9.94
Sayed Jawhary	1,465	0.51
TOTAL	118,926	41.134

EXHIBIT C

REGISTERED SHAREHOLDERS OF CCAH SHARES

Shareholder	Number of Shares Held	Percentage
Burford Investments Ltd	28,837	9.282
Clark M. Clifford	2,395	0.828
Robert A. Altman	1,197	0.414
TOTAL	32,429	11.216

July 11, 1994

No. 95-704

Supreme Court, U.S.
FILED
DEC 11 1995
CLERK

In The

Supreme Court of the United States

October Term, 1995

AKHTAR HAMID, SHRICHAND CHAWLA, SOHA, INC., IDRISS DEVCO, INC., S&L GENTRADE, INC., LEO D. CURRAN, NIAM MUSLEH, WILLY HERMANS, RED CIRCLE INVESTMENTS, LTD., SADIK MAHMOUD HASHIM, NUHA HUSSAIN MUBAREK, JALEH KHORASSANCHY, PHILIP MERZ and AMIT PANDYA, On Behalf Of Themselves and All Others Similarly Situated,

Petitioners,

vs.

PRICE WATERHOUSE; PRICE WATERHOUSE/U.K.; PRICE WATERHOUSE WORLD FIRM, LTD.; PRICE WATERHOUSE/U.S.; ERNST & YOUNG; ABU DHABI, EMIRATE OF ABU DHABI; ABU DHABI INVESTMENT AUTHORITY; BANK OF AMERICA CORPORATION; BANKAMERICA CORP.; BANK OF AMERICA NT&SA; HILL & KNOWLTON; GRP INVESTMENTS; INTERREDEC, INC.; INTERREDEC SOUTHERN CO.; FIRST AMERICAN CORP.; FIRST AMERICAN BANKSHARES; PAUL ADAMS; JACK BEDDOW; A. VINCENT SCOFFONE; T. BERTRAM LANCE; INDEPENDENCE BANK; MANUEL NORIEGA; FULVIO DOBRICH; ROBERT ALTMAN, CLARK CLIFFORD and CLIFFORD & WARNKE,

Respondents.

Petition For Writ Of Certiorari To The Ninth Circuit Court Of Appeals

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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REPLY ARGUMENT

I. THE NINTH CIRCUIT PROPERLY EXERCISED APPELLATE JURISDICTION IN THIS CASE

Contrary to Respondents' argument, *see* Resp. Br. at 2-4,[1] the court below properly exercised appellate jurisdiction over this case. Respondents' arguments were fully analyzed by the Ninth Circuit which concluded, based upon Fed. R. App. P. 4(a) and its own precedent, that the appeal was timely filed. A-5 to A-7. Thus, there is no "serious threshold issue" as to appellate jurisdiction, Resp. Br. at 2, and this Court should avoid Respondents' invitation to ignore the serious legal issues raised by the Petition.

II. PETITIONERS HAVE STANDING TO SUE THOSE DEFENDANTS WHO PARTICIPATED IN THE BCCI CRIMINAL ENTERPRISE

Respondents' and Fiduciaries' oppositions to the Petition embody a critical inconsistency demonstrating why review should be granted by this Court. While Fiduciaries argue that BCCI "was the victim of the wrongdoers' conduct," Fid. Br. at 7, and that Petitioners' claims "belong to" BCCI, *id.* at 8, Respondents acknowledge "the many sins committed by BCCI around the globe" and concede that "BCCI was a bad bank," Resp. Br. at 4, thereby conceding that BCCI was a *perpetrator* of RICO predicate acts, *not* a victim of *others'*

---

[1] References to the Petition for Writ of Certiorari are stated herein as "Pet. at ___"; references to its appendices are stated as "A-___." References to Respondents' Brief in Opposition are stated as "Resp. Br. at ___," while references to the Brief of First American Corp. *et al.* in Opposition are stated as "First Amer. Br. at ___." References to the Brief of the Court Appointed Fiduciaries ("Fiduciaries") of BCCI, as Amicus Curiae, in Support of Respondents, are stated as "Fid. Br. at ___"; references to its appendices are stated as "Fid. Br. Appx. at ___a."

criminal acts. Pet. at 22-23 & n.19; A-65 to A-67, A-113 to A-115.[2]

Notwithstanding Respondents' gross mischaracterization of the Complaint's allegations, Resp. Br. at 7-9, Petitioners allege that defendants participated in a fraudulent scheme to mislead bank regulators *and* defraud depositors of their money. In describing defendants' complex scheme, the district court stated, *inter alia*, that "[Petitioners] were defrauded into placing their deposits into a criminal enterprise instead of a legitimate bank because BCCI falsely represented that it had substantial assets, profitability, a lawful operation and would be able to honor depositors' claims." A-30. Petitioners' allegations clearly satisfy the proximate causation standard announced in *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258 (1992).[3]

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[2] Fiduciaries' characterization of BCCI as the "victim of wrongdoers' conduct," Fid. Br. at 7, ignores this Court's statement in *National Organization for Women, Inc. v. Scheidler*, ___ U.S. ___, 114 S. Ct. 798, 804 (1994) ("*NOW*"), that "the 'enterprise' in subsection (c) [of § 1962 of RICO] connotes generally the *vehicle* through which the unlawful pattern of racketeering activity is committed, rather than the *victim* of that activity." (Emphasis added.) In asserting that BCCI was a "victim" of the fraudulent scheme, the court below (and the Fiduciaries) miss the critical distinction between fraud *on* the Bank (wherein BCCI is a victim) and fraud *by* the Bank (wherein BCCI is one of the perpetrators). *See* A-20; Fid. Br. at 6-8; *compare Cenco, Inc. v. Seidman & Seidman*, 686 F.2d 449, 456 (7th Cir.), *cert. denied*, 459 U.S. 880 (1982) *with Mid-State Fertilizer Co. v. Exchange Nat'l Bank*, 877 F.2d 1333, 1336 (7th Cir. 1989). The Fiduciaries' characterization is also contradicted by BCCI's 1991 guilty plea to criminal RICO and state law charges, *see* Fid. Br. Appx. 6a-8a (Plea Agreement), and its forfeiture of hundreds of millions of dollars in U.S. assets, *see id.* at 31a-32a (Order of Forfeiture).

[3] *See, e.g., GICC Capital Corp. v. Technology Fin. Group*, 30 F.3d 289, 292-93 (2d Cir. 1994); *Mid Atlantic Telecom v. Long Distance Servs.*, 18 F.3d 260, 262-64 (4th Cir.), *cert. denied*, ___ U.S. ___, 115 S. Ct. 323 (1994); *Cox v. Administrator U.S. Steel & Carnegie*, 17 F.3d 1386, 1398 (11th Cir. 1994), *cert. denied*, ___ U.S. ___, 115 S. Ct. 900 (1995); *Ceribelli v. Elghanayan*, 990 F.2d 62, 65 & n.3 (2d Cir. 1993); *University of Maryland v. Peat Marwick Main & Co.*, 923 F.2d 265, 274 (3d Cir. 1991).

Contrary to Respondents' assertion, Resp. Br. at 5-6, Petitioners' injuries[4] are not "derivative." The primary characteristic of this case is the involvement of a bankrupt corporation (BCCI) in pari delicto with other players (defendants) orchestrating fraudulent or otherwise illegal schemes. The players include a bankrupt corporation, creditors who have invested in that corporation, and non-debtor third parties who have committed the fraud that has caused injury. This case also involves a Ponzi scheme where investments (here deposits) were solicited. The difference between this case and the ones relied upon by Respondents, Resp. Br. at 6, 9-12, is that the debtor corporation, although in bankruptcy, has not sustained injury as a *victim* of the fraud but is injured, if at all, only because it participated in pari delicto in the fraudulent scheme as a corporate co-conspirator and was the subject of regulatory seizure when the scheme went sour. *See, e.g., In re American Continental Corp./Lincoln Sav. & Loan Sec. Litig.*, 794 F. Supp. 1424 (D. Ariz. 1992). "The rule in these cases is that 'when a bankrupt corporation has joined with a third party in defrauding its creditors, the trustee cannot recover against the third party for the damage to the creditors,' " *Apostolou v. Fisher*, Case No. 94 C 7244, 1995 U.S. Dist. LEXIS 13636, at *30 (N.D. Ill. Sept. 18, 1995) (quoting *Shearson Lehman Hutton, Inc. v. Wagoner*, 944 F.2d 114, 118 (2d Cir. 1991)), and, therefore, plaintiffs' injury is *direct*.

Accepting as true the allegations of Petitioners' Complaint, BCCI was not a victim of fraud. Defendants did not target their fraudulent actions against BCCI; they used it as an

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[4] Respondents assert that Petitioners did not suffer *any* injury to their business or property, Resp. Br. at 4 & n.5, ignoring the express (and detailed) allegations of Petitioners' Complaint, Pet. at 4 & n.3; A-115 to A-132; these allegations of injury are clearly sufficient under *NOW*, 114 S. Ct. at 803; *see also* Pet. at 20-22, particularly when coupled with allegations that the district court characterized as "clearly and painstakingly detail[ing] defendants' involvement with BCCI." A-33; *compare* Pet. at 13 *with* Resp. Br. at 16 n.17. Respondents ignore the acknowledgement in BCCI's 1991 Plea Agreement that "the failure of BCCI is likely to cause thousands of innocent depositors and other creditors throughout the world to suffer losses in the aggregate in billions of dollars." Fid. Br. Appx. 3a.

instrument to defraud Petitioners, who were the principal targets of the Ponzi scheme. BCCI did not conduct any legitimate business; its sole purpose was to act as a conduit for depositors' funds. Although BCCI is now bankrupt, and therefore injured, because its accounts were used to finance illegal transactions, siphoned off to BCCI insiders and affiliates and lost forever when the Bank was seized by regulators, Petitioners' multi-million dollar injuries do not flow from BCCI's injury. BCCI, in fact, is only injured because its depositors were defrauded. Otherwise, it would not have had any money to be looted. Although BCCI was arguably injured by the scheme, BCCI was not the only target of defendants' Ponzi scheme. The injury that Petitioners suffered, therefore, was not merely derivative of any injury sustained by BCCI; the injuries suffered by Petitioners were *direct* because they were targets of a fraudulent scheme that included BCCI as a means to effectuate the conspiracy's goals.[5]

In the alternative, Petitioners suffered both derivative injuries – as creditors of BCCI – and direct injuries – as targets of the Ponzi scheme of which BCCI was a part. Under a second line of cases which the court below ignored, the creditor of a bankrupt corporation seeks to assert a claim against a third party based on actions the third party took directly against the individual creditor, even though this same third party also injured the corporation, sending it into bankruptcy. Although the creditor's injuries are both direct *and* derivative, courts hold that an individual creditor may pursue a cause of action against a third party outside bankruptcy for the direct injuries that the creditor, rather than the corporation, suffered.[6]

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[5] *See, e.g., Caplin v. Marine Midland Grace Trust Co.*, 406 U.S. 416, 429-34 (1972); *GICC Capital*, 30 F.3d at 293; *Shearson*, 944 F.2d at 118; *In re EDC, Inc.*, 930 F.2d 1275, 1279 (7th Cir. 1991); *Williams v. California 1st Bank*, 859 F.2d 664, 666 (9th Cir. 1988); *Apostolou*, 1995 U.S. Dist. LEXIS 13636, at *41-*42; *see also* Pet. at 24-26 & nn.23-24.

[6] *See, e.g., Ashland Oil, Inc. v. Arnett*, 875 F.2d 1271, 1280 (7th Cir. 1989); *Bankers Trust Co. v. Rhoades*, 859 F.2d 1096, 1101 (2d Cir. 1988), *cert. denied*, 490 U.S. 1007 (1989); *Apostolou*, 1995 U.S. Dist. LEXIS 13636, at *42.

III. PERMITTING PETITIONERS TO LITIGATE THEIR RICO CLAIMS WOULD NOT INTERFERE WITH BCCI'S FOREIGN LIQUIDATION PROCEEDINGS AND WOULD NOT LEAD TO "DOUBLE COUNTING" OF DAMAGES

Contrary to Respondents and Fiduciaries, Resp. Br. at 12-13; Fid. Br. at 6-10, allowing Petitioners to litigate their RICO claims against the wrongdoers who defrauded depositors – BCCI's officers, directors and controlling shareholders, as well as the Bank's lawyers and accountants who participated in the criminal enterprise – would *not* lead to "double counting" of damages and would *not* "interfere" with the foreign liquidation proceedings.[7] The interference argument, which is based on the discredited notion that BCCI was the "victim" of the fraudulent scheme – not one of the wrongdoers – and that Petitioners' RICO claims belong to BCCI's Fiduciaries, Resp. Br. at 9-11; Fid. Br. at 7-8, 12, ignores *Caplin*, where a bankruptcy trustee filed a breach of duty action on behalf of debenture holders against an indenture trustee (Marine) who allegedly permitted the corporation to violate the indenture. This Court held that the trustee had no

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[7] The court below noted that "BCCI is being liquidated in international proceedings in Luxembourg," A-20; however, it made no *factual* findings about the nature of those proceedings or the law under which they are being conducted, nor did it address the liquidator's power or authority. *Id.* Fiduciaries did not appear in the courts below to contest Petitioners' standing, thus, there is no factual record to support their current assertions about the purported status of those liquidation (and other) proceedings. Fid. Br. at 3-9. This critical omission distinguishes *In re Sunrise Sec. Litig.*, 916 F.2d 874 (3d Cir. 1990), where the FDIC, acting as statutory receiver for the insolvent thrift institution, intervened in the district court, objecting to the plaintiff depositors' standing to assert RICO claims seeking to recover lost interest based upon the defendant insiders' failure to disclose improper business practices. The Third Circuit, citing "important policy concerns," including distribution "in accordance with the *federal* priority scheme," agreed that maintenance of the depositors' action threatened to disrupt liquidation of the thrift's assets and granted the FDIC's summary judgment motion. *Id.* at 888 (emphasis added). In this case, there is no factual record supporting the conclusion – on a Rule 12(b)(6) motion – that allowing Petitioners' claims to proceed would "interfere" with BCCI's liquidation. A-20; *see also* Pet. at 27-28 & nn.26-27.

standing to raise claims of misconduct by that third party on behalf of creditors of the estate (*i.e.*, victims of the alleged breaches of duty). *Caplin*, 406 U.S. at 434. *Caplin* emphasizes that the victims (like Petitioners here) should be permitted to sue, make their own decisions and have control of litigation brought on their behalf. *Id.* at 431. This Court recognized that a trustee who attempts to represent victims of the wrongdoing might take actions or assert legal claims which are inconsistent with lawsuits that the victims might bring themselves, stating that "it is extremely doubtful that the trustee and all debenture holders would agree on the amount of damages to seek, or even on the theory on which to sue," *id.* at 432 (footnote omitted), that "[t]he trustee may well have interests that differ from those of the bondholders" and that "[t]he conflict may at times be unfavorable to the debenture holders"; in such a case, "the debenture holders might regret placing their confidence in the trustee." *Id.* at 432 n.21.[8]

The truth of *Caplin*'s pronouncements may be seen in this case because Fiduciaries have failed to sue many of the wrongdoers named in Petitioners' Complaint and, even in the purportedly pending cases brought by Fiduciaries, they have asserted RICO claims against a minuscule number of defendants who are, in all likelihood, judgment-proof. Fid. Br. at 8-9.[9] Thus, *Caplin* controls here and Fiduciaries have failed

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[8] In addition to ignoring *Caplin*, Fiduciaries and Respondents ignore numerous cases holding that they do not have standing to sue on behalf of Petitioners, the victims of BCCI's fraudulent scheme, and that they cannot preempt Petitioners' claims. *See, e.g., Steinberg v. Buczynski*, 40 F.3d 890, 893 (7th Cir. 1994); *In re Educators Group Health Trust*, 25 F.3d 1281, 1284-85 (5th Cir. 1994); *E.F. Hutton & Co. v. Hadley*, 901 F.2d 979, 985-87 (11th Cir. 1990); *In re Rare Coin Galleries, Inc.*, 862 F.2d 896, 900 (1st Cir. 1988); *DeWit v. Firstar Corp.*, 879 F. Supp. 947, 996 (N.D. Iowa 1995); *Amazing Enters. v. Jobin*, 160 B.R. 850, 851 (D. Colo. 1993). *Caplin* remains the law under the revised bankruptcy code. *Koch Refining v. Farmers Union Cent. Exch.*, 831 F.2d 1339, 1347-48 n.11 (7th Cir. 1987), *cert. denied*, 485 U.S. 906 (1988); *In re Ozark Restaurant Equip. Co.*, 816 F.2d 1222, 1228 (8th Cir.), *cert. denied*, 484 U.S. 848 (1987).

[9] Fiduciaries' truncated descriptions of the actions it has purportedly brought against the wrongdoers, Fid. Br. at 8-9, do not mention whether any of those defendants have asserted that the Fiduciaries, who stand in BCCI's shoes, lack

to advance any persuasive reasons why Petitioners' RICO claims belong to them.[10]

The "double counting" argument, Fid. Br. at 6, was expressly rejected in *Hayes v. Gross*, 982 F.2d 104 (3d Cir. 1992), which held that stock purchasers in a savings association (Bell) who alleged that its officers and directors had misrepresented its financial condition, thereby causing the purchasers to pay an inflated price for its stock, could assert their claims directly against the corporate insiders:

> Allowing plaintiff to pursue this claim will neither prejudice the corporation and its other stockholders nor permit a double recovery for the same injury. If Bell has claims against its officers and directors arising from their mismanagement, the [Resolution Trust Corporation] is free to pursue those claims for the ultimate benefit of the creditors and stockholders of Bell. Assuming solvency on the part of the defendants, as we must on this record, we see no conflict between plaintiff's interest and those of the creditors and other stockholders.

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standing to sue them because BCCI participated in the fraudulent scheme. *See, e.g., Rare Coin Galleries*, 862 F.2d at 901 ("The trustee steps into the shoes of the debtor for the purposes of asserting or maintaining the debtor's causes of actions."); *Pate v. Hunt*, 149 B.R. 96, 101 (Bankr. N.D. Tex. 1992) ("A co-conspirator in a fraudulent act, such as the RICO bankruptcy fraud alleged here, 'cannot also be a victim entitled to recover damages, for he cannot have relied on the truth of the fraudulent representations and such reliance is an essential element in a cause of fraud.' ") (quoting *Cenco*, 686 F.2d at 454).

[10] Decisions following *Caplin* reject the notion that Fiduciaries have standing to assert *any* claims on behalf of Petitioners. *See, e.g., Williams*, 859 F.2d at 667; *Ozark Restaurant Equip.*, 816 F.2d at 1228); *Cumberland Oil Corp. v. Thropp*, 791 F.2d 1037, 1042 (2d Cir.), *cert. denied*, 479 U.S. 950 (1986); *Bloor v. Carro, Spanbock, Londin, Rodman & Fass*, 754 F.2d 57, 62 n.4 (2d Cir. 1985); *Melamed v. Lake County Nat'l Bank*, 727 F.2d 1399, 1404 (6th Cir. 1984); *In re Equity Funding Corp. Sec. Litig.*, 603 F.2d 1353, 1360-61 (9th Cir. 1979); *Rochelle v. Marine Midland Grace Trust Co.*, 535 F.2d 523, 527 (9th Cir. 1976); *In re LendVest Mortg., Inc.*, [1990-1991 Transfer Binder] Bankr. L. Rep. (CCH) ¶73,595, at 97,814 (N.D. Cal. 1990); *Biben v. Card*, [1989 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶94,339, at 94,214 (W.D. Mo. 1988).

Id. at 108-09. "As far as the potential for double recovery is concerned," the court concluded, "[i]t will suffice for present purposes to conclude, as we do, that double recovery is not inherent in plaintiff's theory of the case and, accordingly, that recovery without duplication is possible." *Id.* at 109 (footnote omitted).[11]

IV. BECAUSE THEY WERE FRAUDULENTLY INDUCED TO DEPOSIT THEIR MONEY INTO BCCI, A CRIMINAL ENTERPRISE RATHER THAN A LEGITIMATE BANK, PETITIONERS ARE ENTITLED TO PRIORITY OVER OTHER CREDITORS

Echoing the court below, Fiduciaries and Respondents contend that permitting Petitioners to pursue RICO claims against those who defrauded them would enable depositors to "jump ahead" of other creditors in priority. Fid. Br. at 6; Resp. Br. at 13 n.15. Yet that is precisely what the law allows where innocent depositors are fraudulently induced to deposit their money into a criminal enterprise, rather than a legitimate

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[11] In *Hayes*, 982 F.2d at 107-09, the Third Circuit distinguished *Sunrise*, upon which the court below, Respondents and the Fiduciaries rely. *See also University of Maryland*, 923 F.2d at 274 (distinguishing *Sunrise* and holding that policyholders of an insolvent insurer could sue Peat Marwick for wrongly certifying the insurer's financial statements, even though the Pennsylvania Insurance Commissioner, in her capacity as the insurer's statutory receiver, intervened and argued that permitting the policyholders to sue would frustrate the state's regulatory scheme to rehabilitate insolvent entities). The Third Circuit followed *Hayes* in *Riley v. Simmons*, 45 F.3d 764 (3d Cir. 1995), where it held that annuitants had standing to bring a securities fraud action against the former directors of an insolvent life and health insurer alleging misrepresentations that induced them to purchase annuities issued by the insurer. The Third Circuit reversed the rulings of the district court, which permitted the New Jersey Commissioner of Insurance to intervene and held that continuation of the annuitants' action would conflict with the insurer's ongoing state rehabilitation proceedings. *Id.* at 766. Judge Hutchinson stated that the annuitants' claim "is for losses they directly suffered, not as stockholders derivatively injured by the directors' or officers' failure to meet their fiduciary duties to the corporation," *id.* at 774, thus, the annuitants' claims "are distinct from those the Commissioner now presses in the pending state action." *Id.* at 774-75 (footnote omitted).

bank. *St. Louis & S.F. Ry. Co. v. Johnston*, 133 U.S. 566 (1890); V Austin Wakeman Scott & William Franklin Fratcher, *The Law of Trusts* §529, at 690-91 (4th ed. 1989) ("[A] bank that receives deposits when it knows that it is hopelessly insolvent becomes a constructive trustee of the money deposited, *and the depositor is entitled to priority over the general creditors of the bank*, provided it can identify the money deposited or trace it into the assets of the bank.") (emphasis added; footnote and citations omitted).

V. THE DOCTRINE OF INTERNATIONAL COMITY DOES NOT SUPPORT DISMISSAL OF PETITIONERS' RICO CLAIMS

Fiduciaries now contend – for the first time by *any* party to this proceeding – that "considerations of comity" support dismissal. Fid. Br. at 10. No court has accorded comity to international liquidation proceedings in the absence of a motion by a party to extend comity. *See, e.g., Philadelphia Gear Co. v. Philadelphia Gear, S.A.*, 44 F.3d 187, 191 (3d Cir. 1994). There has been no showing, on any *factual* record, that (1) the foreign liquidation proceeding shares the U.S. policy of equal distribution of assets; and (2) the foreign state's law mandates the issuance or at least authorizes the request for the stay. *Id.* Because this issue was *never* raised by *any* party in the courts below, there was no "evidentiary hearing with expert testimony to ascertain foreign laws and procedures," which is mandatory where (as here) these matters are "in dispute." *Id.* at 193 (Mexican bankruptcy proceeding).[12]

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[12] *See also Drexel Burnham Lambert Group, Inc. v. Galadari*, 777 F.2d 877, 881 (2d Cir. 1985) (plaintiff creditor was entitled to discovery and an evidentiary hearing on the issue of whether international comity barred its action; "Drexel never was afforded even the barest opportunity to determine the fairness of the proposed Dubai proceeding. . . . Here, the district court is sending Drexel into uncharted territory. In fairness to Drexel, therefore, it should have been afforded reasonable discovery and an evidentiary hearing."). This Court's decision in *Canada Southern Ry. Co. v. Gebhard*, 109 U.S. 527 (1883), is clearly distinguishable because it gave deference to bankruptcy proceedings in Canada, a sister common law jurisdiction with bankruptcy procedures akin to our own. *See Drexel*, 777 F.2d at 881.

Because no motion to extend comity was ever filed, the requisite discovery, evidentiary hearing and district court findings were never conducted or made. *Philadelphia Gear*, 44 F.3d at 194. As a result, there is no reasoned basis upon which to extend comity to BCCI's foreign liquidation proceedings and Fiduciaries cannot justify denial of the Petition relying on this last ditch argument.

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